



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 67 OF 2025

The State of Maharashtra,
Through Dy.S.P.,
Anti-Corruption Bureau, Aurangabad.

... Applicant

Versus

1. Dilip Karbhari Tejimkar,
Age : 42 years, Occu. Service as Police Naik,
B. No. 1276, Police Station, Daulatabad,
Aurangabad (City).
R/o. Plot No. 12, Raghuveer Apartment,
Suyog Colony, Padampura,
Aurangabad.

2. Shaikh Farooq Shaikh Yunus @ Babbu,
Age: 32 years, Occup. :Labour,
R/o. Near Deogiri Vidhyalaya,
Daulatabad, Aurangabad.

... Respondents
(Orig. Accused)

.....

Mr. S. P. Joshi, APP for Applicant – State.

Mr. Nilesh S. Ghanekar, Advocate for Respondent Nos.1 and 2.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 03 OCTOBER 2025

PRONOUNCED ON : 13 OCTOBER 2025

ORDER :

1. Dissatisfied by the judgment and order of acquittal dated 05.02.2025 in Special Case (ACB) No. 279 of 2021 by which, accused respondents came to be acquitted from charge under sections 7 and 12 of the Prevention of Corruption Act, State is hereby seeking leave to question the said judgment.

2. Learned APP pointed out that, accused no.1 was police official and was a public servant. He pointed out that, complaint was received by ACB authorities against above accused persons i.e. demanding bribe for forbearing from registering crime against complainant. Accused no.2 had abetted accused no.1 to accept illegal gratification and therefore, both were tried for charge under section 7 as well as section 12 of P.C. Act. Learned APP pointed out that, prosecution had adduced evidence of complainant Abdul Rahim Abdul Kadar (PW2), shadow panch (PW3), Investigating Officer (PW4) in support of above charge. That, unanimously testified about accused approaching complainant and threatening to register false crime of purchasing stolen property and thereby demanded bribe of Rs.1,00,000/- and on negotiations brought down to Rs.70,000/- and also suggesting to pay Rs.10,000/- per month. That, accordingly ACB authorities summoned independent shadow panch and trap was planned by undertaking verification panchanama recording actual conversation of demand. That, required ingredients for attracting both the charges were available, but the same has not been correctly appreciated by learned trial court.

3. He further submitted that, prior to prosecuting, valid sanction was obtained i.e. as regards to accused no.1 is concerned. On

application of mind, sanction to prosecution was granted and even there is positive finding to that extent by trial court. However, he further added that learned trial court has refused to accept demand and acceptance as proved and noting some minor variances and shortfalls, which were not at all fatal, accused stood acquitted. Therefore, State has a good case on merits and hence, learned APP urges for leave to file appeal.

4. Per contra, learned counsel for original accused, while supporting the judgment of acquittal, pointed out that, prosecution has miserably failed to bring home the charges. He would submit that, *sine qua non* like demand is not cogently proved. He pointed out that, crucial witness Mr. Kawade, who made demand are not made accused nor examined. That, complainant himself has not supported prosecution. That, testimony of shadow panch does not lend support to the prosecution case in toto. That, conversation which is allegedly recorded, is distinctly stated by witnesses and Investigating Officer. That, rather it has come on record that the conversation regarding money was pertaining to another transaction and was in different context. That, according to him, learned trial court has meticulously and closely appreciated evidence of witnesses and has arrived to just conclusion about failure of prosecution to bring home the charges. Finally it is submitted that accused being acquitted by trial court, there is strong

presumption of his innocence and that during appeal against acquittal, appellate court cannot substitute its own view by interfering in the view taken by learned trial court and he urges to reject leave.

5. Heard. Perused the papers as well as evidence and even the impugned judgment. PW1 Nitin Gupta seems to be the sanctioning authority; PW2 Abdul Rahim Abdul Quadar seems to be the complainant; whereas PW3 Madansingh seems to be the shadow panch and PW4 Nandkishor Kshirsagar is the Investigating Officer.

6. Sum and substance of evidence of PW2 Abdul Rahim Abdul Quadar is that, on 13.09.2020, he was approached by two police officials for inquiry of purchase of scrap and then he was summoned by accused no.1 Tejimkar to the police station. He deposed that, at that time, another official Mr. Kawade was accompanying him and also accused no.1 shared his contact number. Accordingly, he had reached police station at 5:00 to 5:30 p.m., but both above persons were not available in the police station and was allegedly asked to come to Maliwada on next day morning. Accordingly he made phone call to accused no.2 Shaikh Babbu on the next date. On next day, witness claims that accused no.1 Tejimkar as well as official Kawade told him that in case an offence is not to be registered, then he will have to pay amount of Rs.1,00,000/-. He

further deposed that, at that point of time itself, accused no.2 said accused no.1 suggesting that complainant's shop is very small and that he would not possess so much amount and requested accused no.1 to reduce certain amount and accordingly amount of Rs.70,000/- was settled. He further deposed that accused no.1 and police official Kawade said to him that, if he intends to run the shop, he would have to pay Rs.10,000/- every month. He further deposed that, accused no.2 asked complainant that if he has financial difficulty, he himself will arrange an amount of Rs.20,000/- to Rs.30,000/- as he has credit to be given to accused no.1 and further asked complainant to adjust the amount to be paid to accused no.1. Accused no.2 asked complainant to arrange remaining amount and to come to Maliwada. He further deposed that, as he was not willing to pay amount, he lodged complaint at Exh.17.

7. Complainant is extensively cross examined, wherein he admitted that accused no.2 was having Rs.50,000/- with him and an amount of Rs.30,000/- to be received by him from accused no.2 and Rs.20,000/- was to be obtained by way of hand loan from accused no.2 and he admitted that he asked accused no.1 as well as accused no.2 that he will arrange and amount of Rs.20,000/- in some time. Accused no.2 paid amount of Rs.50,000/- to accused no.1. In paragraph 10, this witness admitted that, he had asked accused no.2 as to whom the

amount is to be paid, to which, accused no.2 allegedly informed complainant that accused nos.1 and police official Kawade have asked him to pay the amount to accused no.2. In paragraph 11 and 12 he is questioned on the point of alleged telephonic conversation at Maliwada with accused no.2, wherein, it was agreed by complainant to pay amount to accused no.2 and further admitted that he could not identify the voice of the actual conversation on the telephone. Subsequently, it appears that when complainant himself stated in examination-in-chief that, accused no.2 did not make demand and when Tejimkar had told to handover money to accused no.2 Babbu, learned APP seems to have sought permission to cross examine complainant, who was the star witness as he was not supported. While under cross by accused, complainant has admitted that demand was made by Kawade.

8. Thus, here, complainant's evidence shows that actual demand is by Kawade, but as pointed by learned counsel for respondent, surprisingly he is neither made an accused nor witness. There is no material suggesting demand by accused no.1, who is a public servant.

9. Another pertinent feature is that, complainant has attributed demand in chorus to both accused nos.1 and 2, but in cross has admitted about demand raised by accused Kawade i.e. at the time of verification.

Resultantly, evidence as pointed out, at the time of demand, is weak and ambiguous.

10. There is also nothing on record to show that accused no.2 was acting at the instance of accused no.1 or his agent so as to accept the case of abetment. Learned counsel for respondent - original accused has also pointed out that apart from witnesses being inconsistent, oral testimony is not matching with report at Exh.20.

11. PW2 has testified that FIR was noted by PW4 and he could only identified his signature, but he denied its contents. Therefore, this also inflicts serious dent to the prosecution version. As stated above, witnesses are speaking about demand made by Kawade. There is no convincing evidence that accused no.1 demanded Rs.1,00,000/- and further brought down the figure to Rs.70,000/- as prosecution witnesses itself deposed that, accused no.2 himself suggested inability of complainant to pay a bribe amount and requested accused no.1 to bring down the same and accordingly it was agreed that accused no.2, who owe credit to accused no.1 would also contribute to meet the demand of Rs.70,000/-. Therefore, such evidence also inflicts serious doubts on the prosecution version. Therefore, with such material on record, this court does not find any patent illegality or perversity on the part of learned

trial court for refusing to accept the case of prosecution. There are several lapses, lacuna and inconsistencies in prosecution case apart from non examination of Mr. Kawade. Resultantly, there is no merit so as to grant leave. Hence, the following order is passed :

ORDER

- (i) Leave is refused.
- (ii) The application for leave to appeal by State is rejected.

(ABHAY S. WAGHWASE, J.)