

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 149 OF 2018

The State of Maharashtra,
Through Police Station, Bidkin,
Tq. Paithan, Dist. Aurangabad.

... Applicant

Versus

Sanjay Damodhar Gore,
Age : 48 years, Occu. : Police Naik,
R/o. Plot No. 10, Komalnagar,
Padegaon, Aurangabad.

... Respondent.

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Mr. D. R. Korade, APP for Applicant - State.
Mr. Rajendrraa Deshmukh, Senior Advocate a/w Ms. Rakshanda
Jaiswal i/b. Mr. Vishal Chavan, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 23 SEPTEMBER 2025
PRONOUNCED ON : 10 OCTOBER 2025

ORDER :

1. Present application by State is with prayers for granting leave to question the judgment and order of acquittal passed by learned Special Judge-5, Aurangabad in Special (ACB) Case No.04 of 2014 acquitting present respondent from charge under sections 7, 13(1)(d) punishable under section 13(2) of the Prevention of Corruption Act.

2. Learned APP would point out that present respondent was charge-sheeted and tried for demanding illegal gratification and

even accepting the same. He further elaborated that, the respondent, who was working in police department and posted at Bidkin Police Station, had demanded an illegal gratification of Rs.5,000/- to prevent the arrest of complainant's relatives in a case arising out of quarrel. That, to desist from arrest, there was demand which was apparently illegal gratification. He further pointed out that, complainant lodged report with ACB authorities, who entertained the complaint, planned a trap in presence of shadow panch and after giving necessary instructions, trap was laid. He further submitted that, both, complainant as well as shadow panch, while in the company of each other, demand verification was done. That, panchanama to this extent has been drawn and subsequently on given date complainant and shadow panch went to the police station and approached the accused. He raised demand and the same was complied. That, after necessary signal was relayed, accused was apprehended with tainted currency. Thus, according to learned APP, there is evidence on the point of demand as well as acceptance.

3. He further pointed out that, after completing investigation, necessary sanction was obtained and on receiving the same, accused person was tried. According to learned APP, only important witnesses have deposed and has stuck up their versions. Learned APP took this court through the testimonies of both,

complainant as well as shadow panch, however, some minor omissions are highlighted by trial court and acquittal has been granted. He further stressed that, prosecution has a good case on merits. That, the necessary ingredients to attract the charges are very much available, and therefore, learned APP seeks indulgence of this court in granting leave.

4. In answer to above, learned Senior Counsel Mr. Deshmukh pointed out that, prosecution has miserably failed to prove the charges. That, star witnesses like complainant and shadow panch are not consistent nor lending support to each other. Learned Senior counsel took this court through the answers given by complainant as well cross faced by shadow panch and pointed out that, very essential requirements of demand and acceptance have come under shadow of doubt on material counts. He further pointed out that, though an attempt was made to record a voice sample, the prosecution failed to adduce evidence to that extent and also failed to place essential certificate required under section 65B of the Evidence Act. That, after meticulous consideration of available material, learned trial Judge was pleased to acquit the accused, and therefore, he urges to refuse the leave as there is already judgment of acquittal is in favour of accused.

5. Heard. Perused the papers. Present respondent seems to have faced trial vide Special (ACB) Case No.4 of 2014. Prosecution seems to have rested its case on the evidence of PW1 complainant, PW2 shadow panch and PW3 Investigating Officer and crucial evidence is that of complainant and shadow panch. It is expected that, these two witnesses restrict to their versions about demand as well as acceptance of illegal gratification.

6. Studied the evidence. Complainant is examined at Exh.19 and it is his testimony that present respondent original accused, who worked as head constable, demanded Rs.5,000/- to evade arrest of his brother Tulshiram, Baliram and Renuka. Therefore, he lodged report with ACB. While in presence of shadow panch, verification panchanama was drawn and he and panch approached accused. He claims that accused asked him whether he brought the money and on asking the accused 'to give', he handed over cash to accused, which he accepted and kept it in the left side pocket of his pant. After which he came out and relayed the signal. However, as pointed out, while under cross, complainant has admitted about visiting his own complaint prior to stepping into witness box and that he was specifically instructed to depose accordingly. In paragraph 7 of the cross, he has admitted that the accused did not voluntarily ask him to pay a bribe for evading arrest and further candidly admitted that

accused did not ask him to pay money at the time of trap also. Such answers weighed over the learned trial Judge in drawing inference that complainant had referred to his own report and thereafter deposed in the witness box.

7. PW2 Uttam is the shadow panch and his evidence is at Exh.24. He also spoke regarding he be engaged to act as panch, and he accompanying complainant to visit accused. He also stated that, in a room at police station, complainant had recorded voice conversation wherein accused and complainant talked about his work with accused, upon which accused put up a demand of Rs.4,000/- and complainant held it before him and accused accepted it. However, as pointed out, while under cross, shadow panch is unable to state whether episode of voice recording is reflected in the panchanama or the voice recorder has been at all seized by way of Muddemal. He admitted that, statement of accused was recorded, but he is unable to tell whether it was recorded at the police rest house or when he brought at the ACB office after the trap. He also admitted that in the verification panchanama, the conversation exchanged between complainant and accused as recorded in the voice recorder, is not reflected and he is unable to explain why material to this extent is missing in the panchanama.

8. PW1 complainant admitted that when voice recorder was played, it was not clearly audible. He also admitted that accused did not voluntarily ask to pay to evade arrest of relatives. Therefore, complainant has admitted that, there was no demand on the first count by accused, which indeed turned out to be fatal to the prosecution.

9. Testimony of Investigating Officer and complainant does not match with the contents of panchanama. Further it has come to light that, on 29.10.2013 and 30.10.2013 relatives of complainant were already arrested. Therefore, subsequent demand to evade arrest itself comes under shadow of doubt.

10. Defence has put up a case of thrusting. There is no rebuttal of the same by prosecution. Therefore, with above quality of evidence, this court does not find any infirmity in the analysis, appreciation and further conclusion as is tried to be questioned by State in appeal. Hence, I proceed to pass the following order :

ORDER

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

(ABHAY S. WAGHWASE, J.)