



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.129 OF 2020

The State of Maharashtra
Through City Police Station, Hingoli,
Tq. & Dist. Hingoli

**... APPLICANT
(Ori. Complainant)**

VERSUS

Amerchand s/o Harkaranji Varma
Age: 45 years, Occu. Service,
Jr. Asstt. [Class-3], Zilla Parishad,
Hingoli, Dist. Hingoli

**... RESPONDENT
(Ori. Accused)**

....
Mr. G. A. Kulkarni, APP for the Applicant - State
Mr. D. M. Shinde, Advocate for the Respondent sole

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CORAM : Y. G. KHOBRAGADE, J.

**RESERVED ON : 01.10.2025
PRONOUNCED ON : 04.10.2025**

FINAL ORDER :-

1. By the present application under Section 378(1)(b) of the Code of Criminal Procedure, the prosecution is seeking leave to file appeal to challenge the judgment and order dated 03.08.2020, passed by the learned Assistant Sessions Judge-2, Hingoli, in Special Case No.01 of 2011, thereby acquitted the respondent / accused for the offences punishable under Section 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.

2. The respondent/accused was working as a Junior Assistant (Education Section), Zilla Parishad, Hingoli. The complainant/informant Shri Pradeep Damodharrao Dandegaonkar, was working as a Primary Teacher with Zilla Parishad School, Zilla Parishad, Hingoli. The complainant was in need of promotional post in the Zilla Parishad School, Basmat. Therefore, the complainant had submitted necessary application with the Education Officer, Zilla Parishad, Hingoli. In order to pursue the said application, the complainant met the accused. On 29.06.2010, the accused disclosed the fact to the complainant that his order of promotion and posting at Basmat is ready and demanded gratification of Rs.25,000/-. Since the complainant was not inclined to give the said gratification, he lodged a complaint with the Anti Corruption Bureau. Accordingly, P.S.I. Bharat Kakde, called two Panchas from the Government Department. The P.S.I. Bharat Kakde gave demonstration and practice about the change of colour of anthracene powder. Accordingly, trap was laid and the respondent / accused caught red handed. After drawing the panchanama and recording the statements of witnesses, a charge-sheet was filed against the present respondent / accused.

3. The plea of the accused was not guilty and claimed for trial. Accordingly, the learned trial Court recorded the evidence of PW1 Pradeep Dandegaonkar / informant at Exh.27, Panch No.1 Syed Turab Ali s/o Mehboob as PW2, the panch witness at Exh.33 sanctioning authority Shri Ramesh Rambhauji Majrikar as PW3 at Exh.40 and the Investigating Officer and informant Bharat Dagdu Kakde as PW4 at Exh.50.

4. During the course of trial, the prosecution proved the following documents:-

Sr. No.	Exhibit No.	Description
1.	28	Complaint
2.	31(46)	Promotion and posting order
3.	34	Verification panchanama
4.	35	Trap panchanama
5.	36	Statement of the accused
6.	41	Letter for sanction of the prosecution
7.	42	Sanction order
8.	43	Letter issued to the accused to publish the list of primary teacher
9.	44	Order of the court to return the amount of Rs.22,250/- to Zilla Parishad, Hingoli
10.	47	Letter to Head Master, Basmat
11.	48	Outward entry
12.	51 & 52	Letter sent to the panchas

13.	53	Pre-trap panchanama
14.	54	Report
15.	55	F.I.R.
16.	56	Arrest panchanama
17.	57	Spot panchanama
18.	58	De-seal panchanama of anthracene powder
19.	59 & 60	Sound sample recording of the accused and panchas
20.	61	Letter to call the CDR
21.	62	Letter to T.I.L.R.
22.	63	Map
23.	64 & 65	Service record of the accused
24.	66	Letter to the Forensic Laboratory for examination of CDs
25.	67	Report of Forensic Laboratory
26.	68	Letter to the Superintendent of Police (A.C.B.), Nanded for permission to file the charge-sheet

5. The defense of the accused is that, his brother-in-law had died on that day in Pali (Rajasthan), and since he had friendly relations with the complainant PW1 Pradeep, hence, he had asked for a hand loan amount from the complainant but the Police authority shown the trap and he was apprehended without any prior thought. In order to prove the fact of death of brother-in-law of the accused, a death certificate / crematorium certificate of Yogesh, filed along with the written statement. However, the Respondent/Accused failed to any financial transaction between him and the Complainant(PW.1).

6. On 03.8.2020, the learned Special Court has passed the impugned order and concluded that, the prosecution failed to prove demand of gratification on part of the Respondent/Accused and as such posting/promotion order was already issued by the Competent Authority and posting was given to PW1 complainant. The prosecution failed to bring material on record to prove that the accused was having authority to issue or pass order of promotion and posting of the complainant PW1 Pradeep. Therefore, question was only to supply the copy of order of promotion and posting and the accused had demanded gratification. However, PW1 Pradeep admitted in his cross examination that all the correspondence from the school was done through the Head Master and the promotion posting, dismissal and suspension, etc. was done through the Head Master of the concerned school. PW1 Pradeep admitted in his cross examination that the Chief Executive Officer of Zilla Parishad, had issued promotion order and the accused had no authority to issue order of promotion. Further, PW1 admitted that on 24.05.2010, list of promoted teachers was published and sanctioned and was known to him. PW1 further admitted that he had not met with the accused with effect from 07.06.2010 to 28.06.2010. Therefore, it proves that

for the first time on 29.06.2010, PW1 complainant met the accused on which day the accused provided copy of order of posting and promotion.

7. It is well settled principle of law that, mere the alleged amount of gratification is found with the accused, cannot be the sole ground for conviction unless the demand and acceptance of gratification is proved on the part of the prosecution. In the case in hand, the recovery of amount of Rs.25,000/- from packet of the Respondent/accused is not in dispute. The demand of gratification on the part of the respondent / accused is not proved by the prosecution. Therefore, the learned Special Court passed the impugned order and acquitted the accused for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. So also, there are several omissions and contradictions, which does not inspire this Court to conclude that the findings recorded by the learned trial Court is perverse, illegal and it does not warrant at the hands of this Court to disturb with the said findings and the reasons recorded by the Special Court are itself justifiable. Therefore, I do not find any substantial ground to grant leave to the prosecution to file appeal.

8. In view of the above discussion, I am not inclined to allow the present application and proceed to pass the following order:-

ORDER

The present application is hereby dismissed.

[Y. G. KHOBRADE, J.]

SMS