



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.189 OF 2019

The State of Maharashtra,
Through P. I. Anti Corruption Bureau
Beed, Tq. & Dist. Beed.

... Applicant
(Orig. Complainant)

Versus

Hariprasad S/o. Vithalprasad Tiwari,
Age : 53 years, Occu. : Service,
R/o. Beed, Tq. & Dist. Beed.

... Respondent
(Orig. Accused)

.....
Mr. N. D. Batule, APP for Applicant – State.
Mr. N. S. Ghanekar, Advocate for Respondent sole.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25 JUNE 2025

PRONOUNCED ON : 07 JULY 2025

ORDER :

1. Getting dissatisfied by the judgment and order of acquittal dated 12.12.2018 passed by learned Special Judge/ Additional Sessions Judge, Beed in Special (ACB) Case No.18 of 2014, State is hereby seeking leave to file appeal.

2. Present respondent, who was working as a Surveyor in the office of D.I.L.R., Beed, was charge-sheeted for demanding illegal gratification of Rs.25,000/- for issuing P.R. Card in the name of mother of PW1. PW1 Rajan as was not willing to pay bribe approached ACB office and lodged complaint, after which ACB

Officer Khedkar planned trap, arranged independent panchas, gave necessary instructions and arranged pre-trap verification panchanama. On 18.03.2014, complainant and shadow panch were approached in the house of accused respondent and after demand, Rs.21,000/- cash was handed over to accused, he accept it and kept it in the driver, followed by necessary signal was relayed and raiding party apprehended accused. After investigation, he was charge-sheeted.

On committal of the matter, present respondent was tried by learned Special Judge/Additional Sessions Judge, Beed, who after appreciating the evidence recorded a finding that there is no proper sanction coupled with non application of mind. *Secondly*, there is no corroboration and support to complainant's evidence through independent witness shadow panch. For such reasons, prosecution case was refused to be accepted by recording acquittal, which is now attempted to be questioned by State by filing appeal and hence leave to do is sought.

3. Learned APP would point out that, there was demand of illegal gratification by respondent accused, who was admittedly a public servant. After lodgment of complaint, ACB authorities planned and arranged trap. That, complainant and shadow panch were duly instructed about the procedure of trap. Pre-trap verification was got done. That, complainant was accompanied by

shadow panch. They both are consistent about demand. That, tainted currency was found in the house which was in possession of accused. Sanctioning Authority has accorded sanction. That, complainant's evidence finds support from independent witness, and therefore, full-proof case was made out, but the same has not been correctly appreciated, and therefore, learned APP seeks leave to question the perverse finding of judgment of acquittal.

4. Learned counsel for respondent while supporting the judgment of acquittal pointed out that, here, sanction is not proved as required by law. *Secondly*, evidence of complainant is not finding support from panch witness. That, the panch witness, who allegedly deposed that shadow panch had not accompanied complainant. Thus, there was no corroboration to the testimony of complainant, who was hell-bent in seeing that accused is arrested. That, neither demand nor acceptance is proved. That, repeated and desperate attempts are made to implicate respondent. Learned trial Judge has rightly accepted the stand taken by accused in the trial court and as case was not proved beyond reasonable doubt, obvious implication was acquittal and hence learned counsel urges to refuse leave.

5. Heard each of the side. Sum and substance of the prosecution case in trial court is that, respondent a Surveyor in

D.I.L.R. office and a public servant, for issuing P.R. card in the name of mother of PW1 allegedly demanded Rs.21,000/-, of which report was lodged with ACB. According to prosecution, complainant accompanied by shadow panch, visited house of accused and on demand paid bribe and was thereafter apprehended the same. However, it seems as pointed out that being a public servant, essential requirement is of sanction to prosecute. Efforts were done to seek sanction and even further efforts were done to prove sanction on application of mind by examining higher authorities, but unfortunately it seems that after giving examination-in-chief, said authority expired and as such was not available for cross-examination. Consequently, such part of evidence in absence of cross is rendered valueless. Therefore, fundamental setback was received to the prosecution case at the inception only. Secondly, again as pointed out PW1 original complainant seems to have accompanied shadow panch several times to approach accused at his office, but meeting did not materialize. Thereafter, on instructions of Investigating Officer, complainant seems to have visited house of accused. However, as pointed out the venue or destination agreed by accused for receiving bribe was not determined or decided as on their own accord, and rather on the instructions of Investigation Officer complainant had visited house of accused to make the trap

successful. The final blow inflicted to prosecution case is that a witness, to whom there were no instructions at all, appears to have accompanied complainant at the time of demand and acceptance, however, he was not examined and so obviously there is no corroboration to the testimony of the complainant. As stated above, complaint is after inordinate delay and there were several and repeated attempts to bribe accused, meaning thereby that by hook or crook complainant had planned to implicate accused. There is no corroboration to the testimony of complainant about demand or acceptance as the shadow panch, who is examined, was not at all accompanied complainant at such crucial time. Therefore, with such quality of evidence, the obvious result would be failure of prosecution to prove its case beyond reasonable doubt. Hence, as like trial court even this court is of a firm opinion that prosecution case has not been proved as required by law, on the contrary, case is rendered doubtful for above reasons. Resultantly, this court does not find it a fit case to accord leave as prayed, thereby constrained to refuse leave. Hence, the following order :-

ORDER

- (i) Leave is refused.
- (ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)