



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.85 OF 2023

The State of Maharashtra,
Through Police Station, Sonai,
Tq. Newasa, Dist. Ahmednagar.

... Applicant
(Prosecution)

Versus

Appasaheb Bhimraj Dhere,
Age : 60 years, Occu. : Service,
R/o. Ghodegaon, Tq. Newasa,
Dist. Ahmednagar.

... Respondent

.....
Mr. N. D. Batule, APP for Applicant – State.
Mr. Sanjay D. Kotkar, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 JULY 2025

PRONOUNCED ON : 14 JULY 2025

ORDER :

1. As complainant State is keen in questioning the judgment and order of acquittal passed by Special Judge, Newasa in Special Case No.664 of 2014 dated 19.05.2023, thereby acquitting present respondent from charges under sections 7, 13(1)(d) r/w section 13(2) of Prevention of Corruption Act, instant leave application is filed.

2. Learned APP appraised this court about prosecution case in trial court regarding present respondent working as Circle

Officer, demanding illegal gratification from PW2 complainant for carrying out revenue entries in 7/12 extracts and revenue record. He pointed out that, initial payment of Rs.16,000/- was made, but again fresh demand of further Rs.5,000/- was put up and such time PW2 complainant approached ACB authorities, who, planned, arranged and executed trap.

3. Learned APP would submit that, evidence of complainant was corroborated by evidence of shadow panch. Pre trap verification was done. That, voice recording report was also placed before trial court. However, in spite of such overwhelming evidence, learned trial court has acquitted respondent without assigning legally sound and acceptable reasons and acquittal is granted by reaching to a finding which are contrary to evidence on record. He would stress that, here, there was both, demand as well as acceptance, anthracene powder traces were also noticed, however, such crucial aspects are not appreciated. Therefore, there being good case, learned APP urges for grant of leave.

4. Supporting the judgment of acquittal, learned counsel for respondent would point out that prosecution failed to establish very demand as well as acceptance. That, defence taken in trial court was of thrusting. He further pointed out that, neither pre-

trap panchanama and its contents nor alleged voice samples were accepted by trial court. He pointed out that, even complainant and shadow panch were giving contradictory versions about exact spot of alleged payment and acceptance. That, learned trial court has carefully and meticulously tested the evidence adduced by prosecution and has enumerated grounds for inability to accept prosecution version. On merits, case of prosecution was found to be very weak, and therefore, he by putting-forth law and principle to be borne in mind while interfering in the order of acquittal, prays to dismiss the application for want of merits.

5. Heard. Perused the papers including judgment sought to be impugned. It seems to be the case of prosecution in trial court that PW2 complainant had allegedly approached respondent accused a Circle Officer with a request to carryout mutation entry with regard to land gut no. 457 in Shingave Tukai area. It transpires from the evidence that, there was civil dispute over above piece of land vide Regular Civil Suit No.276 of 2012 and *status quo* order was said to be in operation. Learned trial court noticed that there is suppression to this extent by the complainant. Even learned APP before this court tried to submit that there was no much serious dispute about pending litigation and case was only pertaining to demand of illegal gratification and its acceptance.

However, it is to be borne in mind that while appreciating the case of complainant regarding demand being made to record mutation entry, such question of title does assume importance. Consequently, there are reasons for not carrying out mutation entry in spite of repeatedly approaching accused. The very purpose of demand for carrying out mutation entry thereby comes under shadow of doubt.

6. Though learned APP submitted that there is pre-trap verification, it is emerging from the order of learned trial court that, script itself of alleged conservation was not before the trial court. In paragraph no. 33 of the judgment, it is noted that the memory card containing the voice recording of verification of demand, in spite of attempted to be played, conservation did not carry material as regards to demand. When very crucial aspect of demand is not substantiated, case of prosecution suffers serious dent.

7. As pointed out that, there are variances in the testimonies of complainant and shadow panch in spite of both claiming together regarding spot of drawing of panchanama. According to PW1, panchanama was drawn in the office, whereas, other counters it by giving the location as outside the office.

8. The trial court in paragraph no.36 has enumerated clauses (a) to (i), which are the prominent features emerging on complete appreciation and analysis, which are rendering case of prosecution doubtful.

9. Resultantly, in the light of above discussion, submissions made by learned APP about availability of good case on merits has no substance or merit. In the considered opinion of this court, with such quality of evidence no fruitful purpose would be achieved by granting leave. No case being made out on merits to grant leave, I proceed to pass the following order :

ORDER

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

(ABHAY S. WAGHWASE, J.)