



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

950 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 89 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
LAXMAN S/O NARAYAN MANDALE

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APP for Appellant / State : Mr. Rajdeep D. Raut.

Adv. for Respondent : Dr. R. R. Deshpande, h/f Ms. Priyanka R. Deshpande.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 21st January, 2025.

Per Court:

. Heard the learned counsel for both the sides.

2 The learned APP for the State pointed out the impugned judgment and order dated 6th October, 2021 passed by the learned Special Judge, Parbhani in Special Case (A.C.B.) No.16 of 2016.

3 It is the case of the prosecution that one Balaji Kansatwad was willing to measure his agricultural land. Therefore, he filed an application for it. The accused was serving as an Assistant Deputy Superintendent in the office of Land Records at Parbhani. The accused demanded a bribe of Rs.500/- from the complainant. Complainant Balaji was not willing to pay that amount. However, during the negotiation, it was agreed that he would pay Rs.300/- as a

bribe to the respondent / accused. Accordingly, a complaint was lodged by complainant Balaji in the office of Anti-Corruption Bureau, Parbhani.

4 Two *Panchas* were called for reading the complaint. It was verified. Thereafter, the verification process of demand of bribe was done with the help of a digital voice recorder. It was found that the accused demanded that bribe amount in the presence of *Panchas*. Thereafter, a trap was arranged. Anthracene powder was applied to three currency notes of Rs.100/- denomination and those notes were kept in the pocket of complainant's shirt. Two *panch* witnesses alongwith the staff of Anti-Corruption Bureau proceeded towards the office of the accused i.e. Land Records at Parbhani. Accordingly, in the office of the accused, on the demand of the accused, the said amount was handed over to him. The accused was caught hold there. He was arrested. A *Panchanama* of that episode of acceptance of bribe was drawn up. The report was lodged at Nawa Mondha Police Station, Parbhani. The memory card of the digital recorder was sent to the Forensic Laboratory. After completion of the investigation, a proposal was sent to the appropriate authority for obtaining sanction to prosecute the accused. After receiving the sanction, the charge-sheet was filed.

5 The accused was charged for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. The accused denied charge and he was tried. Prosecution examined four witnesses. The defence of the accused is of total denial.

6 To establish the case, three important aspects are to be proved by the prosecution i.e. demand of bribe, acceptance of amount of bribe and sanction to prosecute the accused.

7 The learned APP for the State during the argument pointed out that, all these three essentials to constitute an offence for which the accused is charged, are proved by the cogent evidence. He further submits that there are reasonable grounds to allow the application. The bribe amount is found with the accused and as per the verification *Panchanama*, it is proved that he demanded a bribe of Rs.300/- and later on he was found while accepting that amount and he has been caught hold and arrested on the spot in his office alongwith said amount. The currency notes and the hands of the accused were checked in the light of the ultraviolet lamp and it was noticed that the anthracene powder was found.

8 The learned APP further submitted that there is strong

evidence against the accused, however, the learned Special Judge failed to consider it in its proper perspective and acquitted the accused without weighing the evidence in its proper perspective. He lastly prayed to allow the application for leave to file appeal.

9 Mr. R. R. Deshpande, learned counsel for the respondent, strongly opposed the application and pointed out the discrepancies in the evidence, which go to the root of the matter, to disbelieve the evidence of the prosecution's witnesses. He submitted that the accused is presumed to be innocent, which is the basic principle of criminal jurisprudence. He pointed out paragraph Nos.19, 32, 34, 37, 42, 43, 46, 49, 52, 53, and 55. He further pointed out paragraph Nos.62, 64, and 66. He lastly prayed to reject the application.

10 Out of the said paragraphs, paragraph No. 66 of the impugned judgment is mostly important and decisive for the purpose of deciding this application. Paragraph No.66 of the impugned order reads as under:-

“66) In the present case also there is a discrepancy in respect of keeping of tainted notes by the complainant PW 1 Balaji. As per his version he has kept tainted currency notes of the pocket of his shirt, while PW 2 Vashisht says that, PW 1

Balaji took out currency notes from the pocket of his pant. The currency notes were recovered from the drawer of the table. The testimony of both the witnesses is not consistent with each other and, therefore, the authority lends support to the submission so made by the learned advocate for the accused.”

11 Paragraph 66 is a concluding paragraph of the impugned judgment and order, in which the learned Special Judge held that there are reasonable doubts in the evidence of witnesses, particularly witness Nos.1 and 2. Testimony of these witnesses is found totally inconsistent with each other. There is no explanation on the part of the prosecution as to why there are basic discrepancies in the evidence of these witnesses, particularly about the raid and trap of the accused while accepting the bribe amount. It is pointed out that the bribe amount was found in the pocket of the accused as well as in the drawer. It is a reasonably doubtful circumstance. Considering all these aspects, the learned Special Judge has rightly concluded that the charge against the accused is not proved beyond reasonable doubt. The presumption of innocence of the accused is not rebutted by the prosecution by probable and acceptable evidence to infer the guilt of the accused. In such circumstances, this Court is of the view that there is no scope for interference in the impugned judgment and

order. There is no any ground to allow this application. The argument of the learned APP for the State is therefore, not acceptable in this case. The application deserves to be rejected. Thus, the application is rejected.

[SANJAY A. DESHMUKH, J.]

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