2025:BHC-AUG:24811

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 238 OF 2018

The State of Maharashtra,
Through P. I. Anti Corruption Bureau,
Dist. Ahmednagar. … Applicant

Versus

Subhash Laxman Waghmode,
Age : 40 years, Occu. : Talathi,
R/o. Avhane Bk. Taluka Shevgaon,
Dist. Ahmednagar. … Respondent
(Orig. Accused)

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Mr. S. P. Joshi, APP for Applicant – State.
Mr. N. B. Narwade, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 10 SEPTEMBER 2025
PRONOUNCED ON : 15 SEPTEMBER 2025

ORDER :

1. State hereby seeks leave to question the judgment and order of acquittal dated 08.10.2018 passed by learned Special Judge/Additional Sessions Judge, Ahmednagar in Special Case No. 20 of 2016.

2. According to learned APP, PW2 Mahesh lodged report with ACB authorities against present respondent, a Talathi, for demanding

illegal gratification to the tune of Rs.1500/- for taking entry and deleting entry of legal heirs. According to learned APP, report was lodged only because there were repeated demands to do the official work. He pointed out that, evidence of complainant PW2 Mahesh was finding support from evidence of shadow panch. That, there was voice recording. That, in presence of shadow panch, there was demand as well as acceptance. However, learned trial court acquitted the accused on the ground that mere gestures were made for making demand and secondly amount so demanded was not illegal gratification, but amount was towards taxes. According to learned APP, learned trial court has failed to consider and appreciate that there were no distinct evidence about any cess or tax so as to hold the amount to be towards the same. Learned APP also pointed out that, learned trial court failed to consider that not once, but thrice demands were made. Therefore, it was a good case on merits, however, on account of improper appreciation, it is submitted that, trial has ended up in acquittal. Therefore, State intends to question the impugned judgment and hence leave is urged for.

3. In answer to above, learned counsel for respondent would point out that prosecution has miserably failed to make out the case regarding demand. That, complainant himself has deposed that after approaching accused, he himself offered money. Thus, there was no

demand. Learned counsel further pointed out that, talks of amount were towards taxes and it was not bribe amount. Moreover, star witness shadow panch has not supported and therefore learned counsel supports the conclusion reached at by learned trial Judge and prays to refuse leave for want of merits.

4. Heard. Perused the papers. PW2 Mahesh seems to have lodged report with ACB authorities that when he had approached accused for taking entry and deleting names of some legal heirs regarding property standing in the name of his father, it is alleged that, at that time to do the needful there was demand of illegal gratification to the tune of Rs.1500/-. On report to that extent, ACB authorities seems to have planned and arranged trap and executing the same. After obtaining sanction, respondent seems to have been charge-sheeted and tried vide Sessions Case No. 20 of 2016.

5. PW1 Prashant Khedkar seems to be Sanctioning Authority; PW2 Mahesh seems to be complainant; PW3 Gautam seems to be shadow panch, PW4 P.I. Sawant seems to be the Investigating Officer. As usual star witnesses are complainant and shadow panch. Learned counsel for respondent has invited attention of this court to the evidence of complainant, it does emerge as pointed out that, on third occasion after

approaching accused, complainant himself seems to have suggested whether he should pay the amount brought by him i.e. prior to any demand. Shadow panch also answered that, he does not remember as to whether while going towards accused, the complainant had told accused that he was ready to pay Rs.3,000/- towards tax, but accused was insisting to deposit an amount of Rs.1500 towards tax. Therefore, his evidence fortifies the defence of accused in his statement recorded immediately after the trap that the amount discussed during conversation towards tax and not bribe. Therefore, with such quality of evidence, when very *sine qua non* of demand has itself comes under shadow of doubt, case of prosecution suffers serious dent.

6. Resultantly, with such quality of evidence, in the considered opinion of this court, conclusion reached at by learned trial Judge, cannot be said to be perverse or illegal. No fruitful purpose would be served by granting leave with above quality of evidence on record. No case being made out, I proceed to pass following order.

ORDER

(i) Leave is refused.

(ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)

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