



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 108 OF 2024

. The State of Maharashtra
Through Parola Police Station, Parola,
Dist. Jalgaon.Applicant

Versus

. Lilachand Hirji Patel
Age: 56 years, Occu.: Circle Officer,
Class-3, Tamaswadi, Tq. Parola,
Dist. Jalgaon, R/o. Bhagwan Bhau Nagar,
Parola, Tq.Parola, Dist.Jalgaon,
Originally R/o.Chandpuri, Tq.Shirpur,
Dist.Dhule.Respondent

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APP for Applicant : Mr.S.A.Gaikwad

Advocate for Respondent : Mr.Joydeep Chatterji

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WITH CRIMINAL APPEAL NO. 1096 OF 2019

. Gokul S/o. Mishrilal Khivansara
Age: 67 years, Occu.: Agri.,
R/o. "Neelam Bungalow",
Agrawal Nagar, Malegaon Road,
Dhule – 424001.Appellant

Versus

1] Lalchand Hirji Patel
Age: 63 years, Occu.: Retired
Government Servant,
R/o. Bhagvan Bhau Nagar,
Parola, Tq.Parola, Dist.Nandurbar.
At present residing at -
C/o Sandip Leelachand Patel
'Vrundawan Colony', Old Mohida Road,
Near Swami Samartha Temple, Shahada,
Tq.Shahada, Dist.Nandurbar.

2] The State of MaharashtraRespondents

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Advocate for Appellant : Mr. Tapan Kishor Sant
Advocate for Respondent no.1 : Mr. Joydeep Chatterji
APP for Respondent no.2 : Mr.S.A.Gaikwad

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 12 NOVEMBER, 2025

ORDER :

1. Application for leave to file appeal is at the instance of State on account of acquittal of respondent accused from charges under Sections 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, vide judgment and order dated 26-07-2019.

Original complainant is equally dissatisfied by acquittal of present respondent accused vide above judgment, hence, he too preferred appeal.

2. Brief facts giving rise to prosecution case are that, PW1 Gokul's father own land in Gat no.112 in village Kharadi, Tq.Parola, Dist.Jalgaon. His father expired in 1984. Therefore, all heirs including brothers and sisters of complainant applied to the Circle Inspector for effecting their names in the 7/12 extract in the capacity of legal heirs. PW1 Gokul approached accused, who was a Circle

Officer and he allegedly demanded Rs.1,10,000/- for above work and after negotiations brought down the figure to Rs.40,000/-. Rs.5,000/- was demanded and paid upfront on the same day and remaining amount of Rs.35,000/- was to be paid after work was over. However, on 23-03-2013, PW1 Gokul received a phone call from accused questioning about the balance amount. As PW1 Gokul was not willing to pay bribe, he approached ACB authorities and lodged complaint exh.32.

3. On receipt of above complaint, PW3 Bhabad, Investigating Officer summoned panchas, introduced them to PW1 Gokul, complainant and they were also given necessary instructions and made aware of the manner of trap and about first verification of demand to be made and thereafter, bribe amount to be paid on demand and to relay necessary signal after which raiding party would apprehend accused.

Accordingly, on 28-03-2013, tainted currency was carried by PW1 Gokul, complainant while in company of PW2 Atmaram, shadow pancha and in a hotel, where PW1 Gokul, PW2 Atmaram and accused met, on demand of accused, tainted currency was paid, necessary signal was relayed and accused was apprehended.

After investigation, he was tried by learned Special Judge and Additional Sessions Judge, Amalner vide Special (ACB) Case No.2 of 2013.

Case of prosecution in trial Court was rested on documentary evidence as well as oral evidence of PW1 Gokul, complainant, PW2 Atmaram, shadow pancha, PW3 Bhabad, Investigating Officer and PW4 Rajurkar, Sanctioning Authority.

After hearing each of the sides, learned trial Court was pleased to hold that prosecution failed to prove demand as well as acceptance i.e. beyond reasonable doubt. That, even PW4 Sanctioning Authority failed to apply its mind while according sanction and further observed that, accused has succeeded in probabillizing his defence and thereby acquitted the accused.

Feeling aggrieved by the order of acquittal, State is keen in filing appeal and hence, has pressed application for leave to file appeal into service. Equally, complainant PW1 is also dissatisfied by acquittal of accused and has preferred Appeal bearing no.1096 of 2019.

Both proceedings as are arising out of common judgment, are dealt and decided by common order.

4. Learned APP, in support of his case for leave, would submit that accused had demanded Rs.1,10,000/- for taking names of heirs i.e. PW1 complainant, his brothers and sisters in revenue record, on account of demise of their father with reference to land Gat no.112. That, on bargain, the figure was brought down to Rs.40,000/-. That, on same day, Rs.5,000/- were accepted and remaining amount was to be paid after work was done. However, he pointed out that, on 23-03-2013 itself accused made a phone call for balance amount and therefore, report exh.32 was lodged by PW1 complainant, which was followed by arranging trap by summoning independent panchas and by giving necessary instructions.

5. Learned APP further pointed out that, by way of abundant prosecution, PW3 Investigating Officer got done verification of demand by sending PW1 complainant, PW2 shadow pancha with voice recorder and the conversation of demand was recorded by drawing panchanama, which is part of record.

6. Learned APP further submitted that, as decided, PW1 complainant, PW2 shadow pancha took tainted currency to be paid on demand to accused on 28-03-2013 at a hotel and there, on

demand by accused, currency was paid and necessary signal was relayed and thereafter, accused was apprehended with currency. Thus, according to learned APP, here there is convincing evidence on the point of demand and acceptance. He pointed out that though PW2 shadow pancha did not support prosecution, it was only to limited extent and that such part of his evidence, which supports prosecution, can be taken recourse to and relied to. According to him, both PW1 complainant and PW2 shadow pancha are consistent on material counts of demand and acceptance.

7. He further submitted that, prosecution has examined PW3 Investigating Officer as well as PW4 Sanctioning Authority. Thus, there was overwhelming evidence in support of the same, but the same has not been correctly appreciated. Even, settled legal position has not been taken into account and therefore, according to him, State intends to question the judgment of acquittal and thereby urges to grant leave to file appeal.

8. Learned counsel for original complainant also questioned the judgment by pointing out that, there is evidence of PW1 complainant to whom there was demand of illegal gratification for taking entries

of legal heirs. That, PW1 complainant has lodged report. That, his evidence has virtually remained unshaken on material counts like pretrap verification of demand and the actual trap during which there was demand as well as acceptance. That, evidence of PW1 complainant was also to some extent supported by PW2 shadow pancha i.e. on the points of demand as well as acceptance and therefore, learned trial Court ought to have accepted prosecution version, but according to him, it had failed to do so. He also pointed out that, there is evidence of PW3 Investigating Officer, who had planned and arranged trap and had apprehended accused. That, PW4 Sanctioning Authority was also examined, who according to him, on due application of mind, had accorded sanction and as such it is his submission that, it was a fit case for conviction. He pointed out that, case set up by accused by way of defence has no foundation and ought not to have been taken into account as the amount demanded from PW1 complainant was only for carrying out entries of legal heirs and even there was acceptance. That, there were traces of anthracene powder on the hands and fingers of accused suggesting acceptance and as such, it is his submission that order of acquittal is bad in law.

9. Here, there being both appeal against acquittal as well as leave

to file appeal, evidence on record is required to be reanalyzed and re-appreciated.

10. In nutshell, in trial court, case set up by prosecution is that, application was tendered for incorporating names of PW1 complainant and his siblings in the capacity of legal heirs in revenue record as a result of demise of their father. Specific case is that respondent, who worked as a Circle Officer, initially allegedly demanded Rs.1,10,000/- and on negotiations, brought down the figure to Rs.40,000/-. Rs.5,000/- were accepted on the alleged date of demand itself.

11. It is fairly settled position that, prosecution has to prove its case beyond reasonable doubt. In cases of such nature, complainant being interested witness, there has to be corroboration from independent corner. Demand as well as acceptance of illegal gratification are *sine qua non*.

PW1 Gokul, complainant reiterated the contents of the complaint. He identified complaint at exh.32 and further deposed that verification of demand was done in presence of PW2 shadow pancha on a voice recorder. Thereafter, PW1 complainant and PW2

shadow pancha proceeded to the office of respondent accused on 28-03-2013 and in testimony, he alleges that again there was demand and he again requested for reduction of amount of demand, but it was refused and therefore, he handed over Rs.35,000/- and thereafter, relayed predetermined signal in consequence to which trap was executed.

However, as pointed out, in paragraph 9 of the cross-examination to which attention of this court is invited, PW1 complainant seems to have admitted that he had already applied to the concerned Talathi for issuance of heirship certificate and that, present accused was superior to the Talathi. He has initially expressed ignorance of already receiving documents of 7/12 extract and also expressed ignorance about any mutation entry being effected on 07-02-2013 by the concerned Talathi. On confronting exh.33, PW1 complainant has admitted that he has already received 7/12 extract as well as mutation entry is already carried out effecting names of himself as well as his brothers and sisters. In paragraph 10, he has answered that, names of legal heirs are already recorded vide mutation entry no.1213. Likewise, in paragraph 15, material omission is brought in his statement where, what he deposed before the court regarding accused asking him whether he brought the

money was missing. He is also unable to assign any reason as to why in his statement it is also not appearing that he answered to the accused that he had brought the money. He answered that he does not remember regarding stating about accused telling him to pay money and even the portion in his testimony about asking accused to reduce the amount is also missing.

Therefore, from the testimony of PW1 complainant, firstly, it appears that, there was no work with accused respondent and rather it was with Talathi of village Karadi and it is further emerging that prior to filing complaint exh.32, complainant had already received 7/12 extract and even mutation entry was effected. Therefore, on the date of complaint, virtually there was nothing left to be done so as to accept his version that for incorporating names in 7/12 extract, illegal gratification was demanded. As stated above, his evidence also carries material omissions on material count of demand.

12. As regards to evidence of **PW2** Atmaram is concerned, he seems to be the shadow pancha. After deposing to some extent, this witness seems to have not supported prosecution and has thereby resiled by stating that no panchanama of powder bottle was drawn before him. His version is also distinct that of PW1 complainant to

the extent that for verification, they had met at sugarcane juice center.

Learned APP, after seeking permission of the court, has **cross examined** his own witness PW2 shadow pancha. In paragraph 7 of the cross-examination, he has flatly denied that on 30-03-2013, he was ever called at ACB office and that PW1 complainant or accused to be present and any voice sample being taken. He also answered that he does not remember whether any panchanama to this effect is drawn but later on identified his signature on exh.43.

Therefore, he is flip-flop witness i.e. some time supporting and some time resiling. Even there is material omission about any discussion taking place between PW1 complainant and accused regarding issuance of heirship certificate and about accused asking PW1 complainant whether he brought the amount and he admitted that such statement is missing from the panchanama.

13. On the contrary, in paragraph 10 itself, he has answered that papers from Jalgaon office were required by PW1 complainant and he was not getting those papers, so accused had assured to arrange such papers and in that regard, PW1 complainant had told that he

would pay Rs.30,000/- to accused Patel to arrange a receipt of such documents from Jalgaon office and he candidly answered that the amount demanded was towards procuring said documents. His such admission shows that talks of demand of money were not pertaining to bribe for doing any work. Therefore, testimony of this witness inflicted serious dent to the prosecution case on the point of very demand of bribe.

14. Likewise, as pointed out by learned counsel for respondent, very Investigating Officer **PW3** Bhabad in his **cross-examination** has admitted that during investigation, it was revealed by Investigating Officer that application for heirship was addressed to Talathi on 21-01-13 i.e. much prior to complaint exh.32, which is in the month of March and he has also admitted that mutation entry was also effected by the Talathi on 26-02-2013 and that work of complainant was already done one month prior to the complaint. He admitted that exh.41 does not carry material about accused putting up demand on 28-03-2013 and there is no CDR of conversation dated 13-03-2013.

15. Further Sanctioning Authority **PW4** Rajurkar does not seem to

have been furnished with entire investigation papers and he too in paragraph 3 of the **cross-examination** admitted that as per procedure, application has to be tendered to Talathi, who completes the procedure and only if there is objection, then matter is referred to Circle Inspector i.e. post occupied by respondent. Here, there is no such case. He also admitted that exh.34 carries names of all heirs and mutation entry is effected bearing no.1213 and he answered that he did not enquire whether it was prior to the work for which bribe was allegedly demanded.

16. Therefore, the sum total of above discussion shows that *firstly*, PW1 complainant had no work pending on the date of complaint with ACB authorities. He had already received heirship certificate and mutation entry is effected for which alleged bribe was demanded. *Secondly*, PW2 shadow pancha having admitted that the demand of money was for procuring documents from Jalgaon and not towards bribe, further demolishes the case of prosecution.

17. Perused the judgment under challenge. Learned APP could not make out any case on merits to grant leave and for above reasons also, no fault can be found on the part of learned trial Court in

acquitting the accused by refusing the case of prosecution. Entire evidence has been appreciated and cogent reasons being assigned, there is no occasion for interference in the impugned judgment. Hence, following order :

ORDER

- I. Application for Leave to Appeal by State is rejected.
- II. Criminal Appeal filed by complainant stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT