

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.573 OF 2013

The State of Maharashtra, Through
Dy.S.P., Anti Corruption Bureau,
Ahmednagar.

...APPLICANT
(Ori. Complainant)

VERSUS

Anna Yadu Kokate,
Age-56 years, Occu:Kamgar Talathi,
R/o-Nimbodi, Tq. & Dist-Ahmednagar.

...RESPONDENT
(Ori. Accused)

...
Mr. K.S. Patil, A.P.P. for Applicant.
Mr. A.M. Gholap Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 13TH FEBRUARY, 2015

ORDER :

1. Heard learned A.P.P. for State and learned
counsel for Respondent - original accused.

2. The learned A.P.P. submitted that in this matter there was evidence that Respondent-original accused demanded illegal gratification and trap was laid and in the course of execution of the trap, the accused accepted the tainted money. However, the facts of the matter are that when the raiding party encircled the accused, he put the currency notes in his mouth and inspite of efforts to open his mouth, did not open his mouth and swallowed the currency notes. Learned A.P.P. submits that the trial Court went on the basis that because notes were not seized from the accused, he deserves to be acquitted. The learned A.P.P. submitted that the accused was taken to the civil hospital for X-ray and thereafter for Endoscopy he was taken to private hospital. When nothing was found in Endoscopy, the complainant suspected and searched near civil hospital window and the wet notes in a bundle were found and were seized. This is reflected in the complaint. According to him, the acquittal was not proper.

3. Counsel for Respondent - accused submitted that the story of the prosecution was unbelievable that those notes were swallowed and could not be seized from the accused. According to him, the alleged seizure of notes from near the window of civil hospital, was not supported by any Panchnama and it is only reflected in the complaint. According to him the trial Court also found that the PW-1 S.D.O. had not applied his mind and mechanically granted sanction.

4. Considering the record and going through the Judgment and reasons, there appears to be an arguable case which requires this Court to reconsider and re-appreciate the evidence. As such leave is granted. The Application is allowed. Application be converted into Appeal.

5. Appeal is **Admitted**. Mr. Gholap, learned counsel waives service of notice for Respondent,

after admission of the Appeal.

6. Action under Section 390 of Cr.P.C. be taken against Respondent-accused in the trial Court and brief report be called.

7. Paper Book be got prepared.

[A. I. S. CHEEMA, J.]

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