

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CRI.APPLN.NO.669/2013

CRIMINAL APPLICATION NO. 669 OF 2013

THE STATE OF MAHARASHTRA
VERSUS
DILIP JAYWANT PATHAK

...
APP for Applicant : Mrs. A.V.Gondhalekar
Mr. Narwade Narayan B., Advocate for. respondent no.1

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CORAM : P.R. BORA, J.
Dated: March 02, 2015

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PER COURT :-

1. The State has filed present application seeking leave to file an appeal against judgment and order passed in Special Case (ACB) No.188/2009, by the Special Judge, Special Court (ACB), Shrirampur, on 30th October, 2012.

2. The respondent herein was prosecuted for the offenses punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

3. In order to prove the charges levelled against the respondent, the prosecution has examined four witnesses; complainant, panch witness, sanctioning authority and the investigator. The learned Special Judge has acquitted the respondent mainly on two grounds, first that the prosecution has failed in proving the demand and that the sanction is not proper.

agp/-

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4. Learned A.P.P. taking me through the judgment delivered by the lower Court, brought to my notice that sufficient evidence is existing on record to show that there was a demand from the respondent i.e. original accused and the same has been proved beyond reasonable doubt by the prosecution through the evidence of complainant Shaukat and panch witness PW No.3 namely Shri Kulkarni. Relevant evidence is read out by the learned A.P.P.

5. So far as other aspect as to sanction is concerned, learned A.P.P. has submitted that sanctioning authority in his examination in chief has categorically stated that after going through the report submitted by the A.C.B., and after having gone through the investigation papers, he was convinced that sanction is to be accorded to prosecute the respondent herein and accordingly sanction was accorded by the said authority.

6. Learned Counsel for the respondent has strongly opposed for giving such leave to the State. Learned Counsel also took me through the relevant evidence so as to support the conclusions recorded by the trial Court. Learned Counsel submitted that the trial Court has recorded an unambiguous finding that the prosecution has utterly failed to prove the demand. Learned Counsel further brought to my notice that clear finding

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has been recorded by the trial Court to the effect that from the evidence brought on record by the prosecution, it has not been proved whether the amount of Rs.2,000/- so handed over by the complainant Shaukat to the accused was towards any bribe or it was towards deficit measurement charges. Learned Counsel submitted that even if it is found that the evidence in that regard is doubtful then also benefit of that doubt shall go to the accused only and that has been rightly given by the learned Special Judge. The learned Counsel thereafter took me through the observations on the point of sanction made by the learned trial Court. Learned Counsel brought to my notice that sanctioning authority in his cross examination has candidly admitted that no document was supplied to the said authority so as to satisfy himself whether to accord sanction to prosecute the accused or not. Learned Counsel submitted that evidence on record is enough to draw conclusion that sanction was mechanically granted. Learned Counsel, therefore, prayed for rejecting the application submitted by the State.

7. I have carefully considered the submissions made by learned A.P.P. as well as learned Counsel appearing for the respondent. First, I will deal with the aspect of whether demand can be said to have been proved from the evidence on record. I have carefully perused the evidence on the point. Prima facie, it appears, the evidence on the point has not been properly appreciated by the learned Special Judge and it requires to be

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reconsidered. The evidence on record shows that the complainant has candidly stated about the demand made by the respondent and his version has been aptly corroborated by Panch witness PW No.3 Shri Kulkarni.

8. As pointed out in the objection regarding valid sanction, the State has certainly made out an arguable case. In such circumstances, it appears to me that leave needs to be granted to the State for filing an appeal. Hence, following order:

ORDER

- A) The application is allowed. Leave granted.
- B) The application be treated as appeal.
- C) Appeal is admitted. Call for R & P.
- D) Action under Section 390 of Cr.P.C. be initiated against the respondent / accused.

(P.R. BORA, J.)

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