

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3022 OF 2015

The State of Maharashtra,
 through Deputy Superintendent
 of Police,
 Anti Corruption Bureau,
 Beed

..APPLICANT
 (Ori.Complainant)

VERSUS

Dr. Omprakash S/o Lalbaji Kingaonkar,
 Age 54 years,
 Occu.: Medical Superintendent,
 Rural Hospital, Parli Vaijnath,
 Tq.Parli Vaijnath,
 Dist. Beed

..RESPONDENT
 (Ori. Accused)

Mr. N.T. Bhagat, A.P.P. for the applicant/State
 Mr. R.S. Deshmukh, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 21/11/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988, by learned Special Judge and

Additional Sessions Judge, Ambajogai, vide his judgement and order dated 21st January, 2015, passed in Special (ACB) case No. 1/2011, the State wants to prefer an appeal and therefore, the present application for grant of leave to prefer an appeal is filed.

3. The respondent was serving as Medical Superintendent of Rural Hospital, Parli-Vaijnath. The medical reimbursement bill for Rs. 15,750/- of complainant Smt. Kalpana Fursule was in process. Therefore, a certificate of the Government Medical Officer was required before passing of the bill. In the circumstances, when on 1st February, 2009, complainant requested the respondent to counter-sign on bill proposal, he made demand of Rs. 1500/- for giving his counter-signature. In the circumstances, the complaint was filed with Anti Corruption Bureau (A.C.B.), Beed on 4th February, 2009.

. PW5 Shankar Sitikar - Deputy Superintendent of Police of A.C.B. conducted the investigation. He collected two panch witnesses, including shadow panch witness. The trap was laid on 5th February, 2009. In the said trap, the respondent again made the demand of

money and accepted the anthracene powdered decoy money. The respondent was caught red-handed. Thereafter, after making further investigation, the sanction to prosecute the respondent was called from the competent authority. Accordingly, PW4 Vilas Vedpathak, the Deputy Secretary has accorded sanction. Thereafter, the chargesheet came to be filed in the Court.

4. The defence of the present respondent was that in fact, he had demanded the amount as donation for Patients Welfare Committee and has never demanded or accepted any bribe. The Government circulars to that effect regarding collection of donation were filed on record by him.

5. The learned Special Judge has found that the sanctioning authority has not applied its mind and that PW4 Vilas Vedpathak - the Deputy Secretary was not competent to grant sanction to prosecute the respondent. On merit also, it was found that the case of respondent is probable one. Hence, the order of acquittal of the respondent was recorded. Hence, the present appeal.

6. Learned A.P.P. submitted that the respondent has, in fact, admitted the acceptance of the decoy money. Therefore, the presumption has arisen that the said amount was accepted towards the gratification other than legal remuneration. He further submitted that the sanction has been granted by the Deputy Secretary in the concerned Ministry after applying his mind.

7. On the other hand, Mr. R.S. Deshmukh, learned counsel for the respondent supports the reasoning forwarded by the learned Special Judge.

8. On going through the record and upon hearing both sides, in my view, there is no need to grant leave to file appeal, for the reasons to follow :-

R E A S O N S

9. The documents on record would show that the respondent was entitled to receive donation towards the welfare, as detailed supra. According to the prosecution case itself, at the time of trap, the only dialogue that took place between the complainant and the

respondent was as to whether the money was brought and after giving affirmative answer by the respondent, the decoy money was paid. Thus, before independent panch witness, there was no conversation which would show that the amount that was being accepted was either towards the bribe or towards the donation.

10. During the said trap, admittedly, the respondent has put the decoy money not in his pocket, but in the drawer of the table. Immediately, he called a peon. It is his case that he called the peon to bring the receipt book to pass receipt in favour of the complainant and before the receipt could be passed, he was apprehended. Further, the investigating officer has also admitted that two more doctors were sitting in the chamber of the respondent at the time of transfer of the decoy money. In these circumstances, on merit the learned Special Judge has found that the prosecution has not proved its case beyond reasonable doubt.

11. As regards the sanction to prosecute the respondent, PW4 - Vilas Vedpathak, the Deputy Secretary has deposed that he had perused the papers on 23rd

September, 2009. On that day, however, the papers were yet to reach his office. The sanction was granted on 25th February, 2011. The learned Special Judge has taken into consideration these facts. Though it can be said that it was a clerical mistake while mentioning year '2009' instead '2011', the very Government Resolution which speaks regarding the procedure for grant of sanction to prosecute would show that the that the Chief Minister has to accord approval for sanction and thereafter the sanction is granted. In the present case, the papers submitted by the prosecution showed that the Chief Minister was not consulted by the home ministry and the Deputy Secretary, Home Department has given the sanction.

. Be that as it may, without making any further comment on the aspect of the sanction to prosecute the respondent, as regards demand and acceptance of money, in my view, since the learned Special Judge has taken reasonable and probable view of the material before him, grant of leave to file an appeal would be an exercise in futility. Hence, the following order.

12. The application is hereby dismissed.

[M.T. JOSHI]
JUDGE

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