

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

**CRIMINAL APPLICATION NO. 3572 OF 2015**

State of Maharashtra ..Applicant

Vs.

Gopinath Punjaji Shinde ..Respondent

....

Mr. S.D. Ghayal, A.P.P. for applicant-State.

Mr. R.S. Deshmukh, Advocate for Respondent.

....

**CORAM : M.T. JOSHI, J.**

**DATED : 18<sup>th</sup> NOVEMBER 2015**

**ORAL ORDER:**

Heard both sides.

2. Respondent-accused is acquitted by the learned Special Judge (ACB), Ahmednagar, in Special Case (ACB) No. 12/2010 vide judgment and order dated 1<sup>st</sup> April, 2015 for the offences punishable under Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988. Being aggrieved by the said order, the applicant-State wants to prefer an appeal and therefore the present application for leave to file is filed.

3. The prosecution case is that the present respondent-accused Gopinath Shinde, during the relevant period, was serving at Kotwali Police Station, Ahmednagar, as Assistant Sub Inspector. On 2<sup>nd</sup> June, 2010, three persons were traveling by a bus and were apprehended by the passengers on the doubt that they were committing theft. In the circumstances, respondent arrested them and filed Chapter Cases under Section 109 of the Code of Criminal Procedure. The complainant was the practicing advocate engaged by the three persons. Despite the order of the Special Executive Magistrate, respondent did not release those three persons and demanded Rs.50,000/- from some of those persons. One accused Mahipal was ultimately released by the present respondent on accepting an amount of Rs.30,000/- and rest of two persons were involved in Crime No.65/2010 registered in the police station, under Section 394 of the Indian Penal Code by the respondent-accused. On the next day, they were produced before the Court and were remanded to the Police Custody for five days. The complainant filed application for releasing them on bail, but the same came to be dismissed. Thereafter, complainant filed an

application on behalf of those two persons in the Sessions Court. The complainant thereafter personally communicated to the present respondent-accused that the Sessions Court has passed an order issuing notice to the prosecution thereby calling say of the Investigating Officer.

4. The present respondent-accused demanded an amount of Rs.10,000/- from each of the accused and threatened that if the said amount is not paid, he would involve them in various other criminal cases pending with the police station. On the next day, the complainant informed the present respondent-accused that he is busy and would pay the said amount on 17<sup>th</sup> June, 2010. On that day, complainant recorded the conversation between him and the present respondent-accused in his mobile and lodged the complaint.

5. The Investigating Officer called two panch witnesses and in their presence pre-trap exercise was carried. The trap was organized. The tainted currency notes were kept with the complainant. The present respondent-accused accepted the said

amount in presence of the panch witnesses and post trap panchnama came to be recorded. After receiving the necessary sanction and completion of investigation, charge-sheet came to be filed. The Sanctioning Authority, panch witnesses and Investigating Officer were examined before the learned Special Judge.

6. The defence of the respondent-accused was that in fact the present complainant practicing as an advocate, had long standing enmity with him. The respondent-accused was carrying investigation in a case in which the complainant was advocate for the accused. Further, during the trap, money was thrust by the complainant in shirt pocket of the present respondent-accused but in the process though the pocket was torn, the shirt was not seized despite immediate request to Investigating Officer by the respondent. Even during the post trap panchanama, he made request to the Investigating Officer to seize the said shirt, but the same was not accepted.

7. Learned Special Judge, upon hearing both the sides, observed that the complainant, who is a practicing advocate, made

a statement in F.I.R. that the conversation between him and the present respondent-accused was recorded by him in his mobile, but in the witness box, he deposed that he has not made such statement at the time of filing of the complaint and therefore contradictory version was made by him. Even the Investigating Officer did not appear to have seized the mobile.

8. The salient feature in this case is that earlier enmity between complainant and the present respondent-accused has been proved. The defence has relied on the extract of police station diary entry dated 24<sup>th</sup> August 2009 at Exhibit 53. It would show that the present respondent-accused had arrested one person in connection with illicit liquor and the present complainant had visited the police station for his release. The Police Station Diary shows that at that time some hot words were exchanged between present respondent-accused and the complainant. Thereafter, after a period of ten months, present incident has occurred.

9. Last, but not the least, the Investigating Officer admitted that during the post trap exercise, the present respondent-accused

insisted that his shirt should be seized which would show that the shirt pocket was torn, but the same was not seized. One another fact which has to be taken into consideration is that none of the accused in the earlier case was examined.

10. Considering all the above facts as appreciated by the Learned Special Judge, in my view, the learned Special Judge has taken a reasonable and probable view of the material before him. Grant of leave to appeal would therefore be an exercise in futility. Hence, the following order.

11. Leave to file Appeal is hereby refused. The application therefore stands dismissed.

**(M.T. JOSHI, J.)**