

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.26 OF 2015

THE STATE (ANTI CORRUPTION BUREAU))...APPLICANT

V/s.

SHRI VISHWAJIT DINKAR PAWAR & ANR.)...RESPONDENTS

Mrs.Anamika Malhotra, APP for the Applicant – State.

Ms.Swapna Kode, Advocate for Respondent No.1.

Mr.Sanket Telang, Advocate for Respondent No.2.

CORAM : ABHAY M. THIPSAY, J.

DATE : 23rd MARCH 2015.

P.C. :

1 By this application, the State of Maharashtra is seeking leave to appeal from the judgment and order of acquittal delivered by the Special Judge under the Prevention of Corruption Act, Greater Bombay, acquitting the respondents of the offences punishable under Sections 7 and 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act.

2 Mr.Sanket Telang and Ms.Swapna Kode, the learned counsel for the respondents, point out to me that the *defacto* complainant had filed an appeal against the impugned judgment and order of acquittal. That appeal was filed by him claiming to be a “victim” of the alleged offence, and by virtue of proviso to Section 372 of the Code of Criminal Procedure. It is pointed out to me that, that appeal (Criminal Appeal No.903 of 2013) was summarily dismissed on 25th September 2013. A copy of the order passed by this court dismissing the said appeal summarily is tendered to me and the same is taken on record.

3 To construe the *defacto* complainant in a trap case as the “victim” of the alleged offences, under the Prevention of Corruption Act, is difficult, and consequently, that such *defacto* complainant would be entitled to file an appeal under the proviso to Section 372 of the Code, is further difficult to accept. The fact, however, remains that, the said appeal, filed by the *defacto* complainant, is not dismissed on the ground of it being not

maintainable. It has been dismissed after considering the merits of the matter. This is evident from the order passed by this court on 25th September 2013.

4 Since this court (Coram : M.L.Tahaliyani, J.) has examined the matter, and has found that the impugned judgment and order is proper and legal, there is no question of reconsideration of the same issue again, merely because the State has now sought to file an appeal from the said judgment and order.

5 Leave refused.

6 The application is rejected.

(ABHAY M. THIPSAY, J.)