

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (ALS) NO.75 OF 2015

The State of Maharashtra ..Applicant
V/s.
Nayumali Shifursab Masumdar .. Respondent

Mr.A.R.Patil, APP for the applicant/appellant.
Mr.Sushant Karandikar, for the Respondent-State.

**CORAM : A. R. JOSHI, J.
DATE : 05th OCTOBER, 2015.**

P.C.

1. Heard rival submissions on this application for leave to file appeal preferred by the State challenging the acquittal of the respondent in the matter of offences punishable under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988.

2. The impugned judgment and order dated 07th April 2015 was passed by Special Judge, Kolhapur in Special Case No.5 of 2006.

3. The case of the prosecution in nutshell is that there

was a initial demand of bribe of Rs.1,700/- by the respondent-accused, an Inspector from the office of Weights and Measurements. He demanded the said amount from the complainant P.W.No.1 for stamping the weigh balance/machine which is installed in the grocery shop of the complainant. Initially when the grocery shop of the complainant was inspected by the respondent on 13th July 2005 respondent noticed that weigh balance/machine was not properly stamped and as such there was no inspection of the said balance by the office of Weights and Measurements. The stamping on the said balance had already expired and as such the complainant P.W.No.1 was asked to get the said weigh balance/stamped after taking it to the office of the respondent.

4. It is also the case of the prosecution that allegedly the demand of bribe was lowered from Rs.1,700/- to Rs.1,200/- and the complainant P.W.No.1 was asked to attend the office of the respondent and to submit an application. Allegedly the complainant submitted two applications but he was asked to come on some Monday which was falling by the

end of August 2005. As complainant was not desirous of paying the amount of bribe he approached the Anti Corruption Bureau, Kolhapur on 26th August 2005 and lodged the complaint. After usual procedure of pre-trap panchannama the trap was laid at the office of the respondent on 29th August 2005 and allegedly there was a demand and acceptance of bribe amount of Rs.1,200/- and the currency notes were taken by the respondent and after counting, they were kept in plastic box on the table. Thereafter per-arrest signal was given by the complainant and the raiding party member along with panch no.2 entered the office. It was ascertain that the tented amount was kept in the plastic box. It was taken out with the help of pancha no.2 and then the respondent was put under arrest after trap panchnamma procedure was concluded.

5. During the trial three prosecution witnesses were examined P.W.No.1 Complainant, P.W.No.2 Panch No.1 and P.W.No.3 is the Investigating Officer who also recorded the First Information Report given by P.W.No.1. Sanctioning Authority is not examined however there is no dispute

regarding the grant of sanction to prosecute the respondent.

6. What weighed with the trial Court was firstly that there was no verification of demand prior to laying the trap at the office of the respondent. Secondly there was no taking of the weigh balance/machine to the office of the respondent for stamping purposes though it was infact the job to be done and for which allegedly the demand of Rs.1,700/- was made by the respondent. Thirdly what influenced the trial Court was the discrepancy in the case of prosecution inasmuch as according to the complainant he had only one weigh machine and that was to be get stamped and for which the bribe amount was asked. However it was brought on record during the cross-examination of the complainant that about a year prior to the incident there was earlier application for stamping of the machine and said machine was of 'Sansui' Company. According to the complainant the machine for which the bribe amount was asked was of 'Padmini' Brand. Learned trial Court also examined this evidence critically and entertained the reasonable doubt as to the failure of the complainant to

establish how the brands of the two machines differ though according to him he had only one machine in his shop. The trial Court has also observed and commented on the substantive evidence of the panch witness wherein it is brought on record that initially on arrival of the raiding party after giving the signal by the complainant, the officer P.W.No.3 inquired with the respondent-accused as to where was the amount and that time respondent tried to search in the drawer of the table and finally pointed towards the plastic box. This circumstance weighed much with the trial Court for doubting the case of the prosecution as to whether there was infact a demand of money and whether the money was accepted by the respondent.

7. The trial Court came to the conclusion on the basis of earlier mentioned three anomalies, that the prosecution has failed to established the charge against the respondent. In the opinion of this Court considering the substantive evidence of three prosecution witnesses and the admissions given by the complainant himself and mainly considering the factual

position regarding the discrepancy in the brands of the machine and admitted factual position that the machine was not taken to the office of the respondent for branding/stamping, there is nothing to entertain this application for leave to file appeal so as to re agitate the issue, thereby allowing the State to challenge the order of the acquittal. In the result the present application for leave to file appeal is dismissed and disposed of.

(A. R. JOSHI, J)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/order.