

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL(STATE) NO.190 OF 2014

State of Maharashtra ... **Applicant**

V/s.

Sharfuddin Shahabuddin Sayyed ... Respondent

• • • • •

Mr. Deepak Thakre, APP for the Applicant/State.

• • • •

CORAM : ABHAY M. THIPSAY J.

DATED : 17TH FEBRUARY, 2015

P.C.

1. The respondent was prosecuted on the allegation that he had committed offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The Special Judge after holding a trial, found him not guilty and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal and is, by the present application, seeking leave to file an appeal therefrom.

2. With the assistance of the learned Additional Public Prosecutor, I have gone through the application and the annexures thereto, which include a copy of the impugned judgment and a copy of the notes of evidence recorded during the trial.

3. Among other things, the learned trial Judge observed that the sanction to prosecute the respondent, as is required under Section 19 of the Prevention of Corruption Act, was not valid in the instant case. Apart from this, he also observed that there had been no proper verification of the demands for illegal gratification.

4. In this case, the sanction to prosecute the respondent was obtained from the Divisional Social Welfare Officer. However, the proper authority to grant sanction was the Director of Social Welfare. This fact has been admitted by the Divisional Social Welfare Officer, who had granted the sanction in the instant case and who was examined as witness No.3 for the prosecution. In the light of this, the finding arrived out by the learned trial Judge, that the sanction was not granted by the authority competent to grant the same and was, therefore, bad in law, cannot be faulted.

5. As regards the demands, it appears that demands had allegedly been made by telephonic contacts. In that regard, the learned trial Judge observed that the telephonic contacts were on the Mobile Telephone and that in spite of this being the position, the prosecution had not produced the Call Data Records in respect of those calls. The learned Judge, therefore, held that the theory of demand had not been satisfactorily established.

6. The view of the matter as taken by the learned trial

Judge is a possible view. It is well settled that when such is the position, the grant of leave would futile.

7. Leave refused.
8. The application is rejected.

(ABHAY M. THIPSAY J.)