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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1268 OF 2015

K.N.Gaikwad, ..Applicant.

V/s.

Director General of ACB, Mumbai and Ors. ..Respondents.

Mr. S.B.Shetye with Mr.Akshay Patkar for the applicant.

Mr.K.V.Saste, APP for respondent-State.

Ms.Jyoti Chavan for respondent No.2.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 11TH DECEMBER, 2015

P.C. :-

1. Heard learned counsel for the applicants, learned counsel for respondent No.2 and the learned A.P.P. for the State.

2. Admittedly, the applicant is the accused No.1 in the private complaint filed by respondent No.2 under section 156 of the Criminal Procedure Code. The said complaint is filed under Section 13(1) (c) (d) of Prevention of Corruption Act and under sections 109, 107, 167, 409, 420 read with 34 of the Indian Penal Code.

3. Accused Nos.1 to 3 in the said complaint had challenged the order passed under section 156 of the Criminal Procedure Code by filing Writ Petition No.2207 of 2013 in this Court. The challenge was on the ground that they are public servants

within the meaning of Section 21 of the Indian Penal Code and also within the meaning of clause (c) of section 2 of the Prevention of Corruption Act, 1988 and, therefore, sanction as contemplated under section 19(1)(c) of the Prevention of Corruption Act is required to be obtained before issuing directions for investigation under section 156(3) of the Criminal Procedure Code. There was no dispute that no sanction was obtained against accused Nos.1 to 3 before issuance of directions under section 156(3) and, therefore, by judgment and order dated 27th October, 2015, the Division Bench of this Court allowed the said petition and quashed the impugned order.

4. The applicant in the present application as stated above is original accused No.4 in a complaint filed by respondent No.2. The applicant is also a municipal employee and a public servant within the meaning of section 21 of the Indian Penal Code and also within the meaning of clause (c) of section 2 of the Prevention of Corruption Act, 1988 and, therefore, he is similarly placed with that of the petitioners in Writ Petition No.2207 of 2013.

5. In the above circumstances and for the reasons stated in the aforesaid petition, this petition is allowed in terms of prayer clause (a).

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)