

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

CRIMINAL APPLICATION NO. 74 OF 2016

State of Maharashtra

..APPLICANT

VERSUS

Narayan Hari Dhepe and Another

..RESPONDENTS

....
Mr. S.N. Morampalle, APP for applicant.

Mr. R.M. Sharma, Advocate for respondents.
....

CORAM : INDIRA K. JAIN, J.

DATED : 6th APRIL, 2016

ORDER :

. By this application State of Maharashtra seeks leave to appeal against the judgment and order dated 15.09.2015 passed by the learned Special Judge (ACB), Nanded in Special Case No. 12/2011 acquitting both the respondents of the offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Morampalle, learned APP for applicant/State and Mr. Sharma, learned Counsel for respondents. Perused record.

3. It is the case of prosecution that complainant Maroti Tukaram Lathkar was working as Junior Clerk at Panchayat Samiti, Mudkhed.

Accused No.1 was Superintendent and Accused No.2 was Administrative Clerk working with the same office. According to complainant as he did not receive arrears of 6th Pay Commission and LTC bill he approached Accused No.2 who asked him to see Accused No.1. It is alleged that accused demanded Rs.500/- to prepare bills of arrears and LTC. On 18.09.2010 complainant lodged report with Anti Corruption Bureau, Nanded. On 20.09.2010 trap was arranged. It was successful. Sanction was accorded by the competent authority and charge-sheet came to be filed before Special Court.

4. Prosecution examined in all four witnesses. Upon considering the evidence of competent authority Trial Court noticed that sanction order Exhibit 36 was issued without application of mind and it was not legal and valid. On merits it was observed that evidence of complainant, panch witness and investigating officer is not consistent and cannot be relied upon.

5. With the assistance of learned APP this Court has gone through the evidence of prosecution witnesses. So far as sanction is concerned, it can be seen from evidence of P.W. 3 Dipendrasinha Kushawah that he was working as Chief Executive Officer, Zilla Parishad, Nanded from 04.06.2011 to 07.06.2012. It means at the time of trap on 20.09.2010 he was not working as Chief Executive Officer, Zilla Parishad,

Nanded. He states that on perusal of papers he was satisfied and accorded sanction to prosecute the accused. Sanction order Exhibit 36 clearly indicates the name of Mr. Sharad D. Kulkarni as the Chief Executive Officer. Though P.W.3 tried to justify in the evidence that due to typing mistake name of Mr. Sharad D. Kulkarni was typed the same was not corrected and even now name of Mr. Kulkarni appears in sanction order Exhibit 36. It indicates lack of application of mind by the sanctioning authority and if so sanction order Exhibit 36 cannot be said to be legal and valid.

6. On merits it is apparent from the evidence of investigating officer that he instructed complainant to meet in the office on 18.09.2010 and 20.09.2010. But on both the occasions complainant did not follow the instructions of investigating officer. He took both the accused to canteen. The place of acceptance of amount was substantially changed and evidence of investigating officer would make it clear that place was not within the view of Anti Corruption Bureau officers.

7. It has come on record that initial demand was in the presence of other staff members. It is also elicited in the cross-examination that BDO Mr. Gore was the competent authority to clear the bills. Prosecution did not examine the material witnesses though available.

8. In the above premise this Court finds that prosecution has no case on merits. Hence the following order:-

ORDER

- I) Leave refused.
- II) Criminal Application No. 74 of 2016 stands dismissed.

(INDIRA K. JAIN, J.)