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

**CRIMINAL WRIT PETITION NO. 269 OF 2016
WITH APPLN/1906/2016 IN WP/269/2016**

**RAMAKANT MAROTRAO PULLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Jadhavar Shivprasad G.
APP for Respondents: Mr.A.R.Borulkar for State.
Adv.Mr.P.P.Dama for intervenor.**

CORAM : A.V.NIRGUDE &
V.L.ACHLIYA,J.**

DATE : 11/07/2016

PER COURT :-

The Special Case No.1/2011 is pending for trial before Additional Sessions Judge, Gangakhed in which the petitioner is the complainant. It is an ACB case in which the respondents-intervenors are the accused. They are charged with offence punishable under Sections 7 and 13 of the Prevention of Corruption Act. Long back charge sheet was filed. Now when the trial began, the complainant found that his original complaint and original panchanama are not in the police papers that are produced before the trial Court. He made an application seeking permission to lead secondary evidence. The Court rejected the application saying that it is for the prosecution to first satisfy the Court that the original documents are not available

etc. In this melee everyone lost sight of the fact that original documents ought to have been produced before the Court alongwith charge sheet. The investigation officer was responsible for it. No one asked him to come before the Court and file an affidavit as to what had happened to the original documents.

2] A police report is filed today which tried to address this aspect of the case. But since it is not accompanied by an affidavit of the investigating officer, we are ignoring its contents. Nonetheless the report admits the loss of original documents. We are directing the prosecution to submit an application under Section 65 of the Evidence Act seeking leave to allow the prosecution to lead secondary evidence by assigning the reasons to grant such permission. We have not expressed our view as to whether secondary evidence is permissible or should not be permissible in this case. It all depends on the facts of the case. We also expressed our dissatisfaction about the manner in which the prosecution is handled at the trial stage. The learned District Government Pleader/Police Prosecutor is directed to pay his personal attention to this case and do the needful. Petition is disposed of.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

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