

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

CRIMINAL WRIT PETITION NO.328 OF 2007

....

The State of Maharashtra.

Petitioner/
Complainant

VERSUS

Totaram s/o Bhaurao Thakare,
age 48 yrs, Occ. Tahasildar,
R/o Indewadi, Tq. & Dist., Jalna

Respondent/
accused.

...

Miss R P Gour APP for State.

...

CORAM : V.K. JADHAV, J.

Dated: August 19, 2016

...

ORAL JUDGMENT :-

1. Heard the learned APP for the Petitioner-State.
2. The Petitioner-State is challenging the order passed by the Additional Sessions Judge-1, Jalna dated 10.4.2007 and 4.5.2007 in Special (PCA) Case No.9/2004.
3. Brief facts, giving rise, to the present writ petition are as under :-

Special (PCA) case No.9/2004 was posted on

10.4.2007 for recording evidence. Summons was issued to the Sanctioning Authority, however, the concerned police station has not submitted the report about the service of summons. Consequently, the prosecution has submitted application for re-issuing summons to the Sanctioning Authority. However, the learned Special Judge has imposed costs of Rs.500/- to be deposited in the Court by the prosecution by order dated 10.4.2007 and 4.5.2007 respectively. Hence, this Writ Petition.

4. The learned APP submits that, even though, said case was part heard and posted for the evidence of the Sanctioning Authority and even though summons was issued to the Sanctioning Authority, the concerned police station has not submitted report about the service of summons. The Sanctioning Authority is material witness of the prosecution. Thus, prosecution was constrained to file an application for re-issuance of the summons to the Sanctioning Authority. However, the learned Judge though observed that, report of the earlier summons are not received by the Court, further without any base observed that the prosecution is not

interested and not diligent while prosecuting the case and thus allowed said application subject to costs of Rs.500/-. The learned APP submits that, even on earlier occasion by order dated 4.5.2007 matter came to be adjourned subject to costs of Rs.500/-. The learned APP thus submits that both the orders are thus deserves to be quashed and set aside.

5. It appears from the impugned order passed by the learned Judge that report of the service of the summons was not received by the Court and therefore, prosecution has filed an application for re-issuance of summons to the Sanctioning Authority. In a case under the Provisions of Prevention of Corruption Act evidence of Sanctioning Authority is material. Thus, the prosecution was constrained to file an application for re-issuance of the summons to the sanctioning authority though service report is not received from the concerned police station. The learned Judge has observed that no reasons are coming for not returning earlier summons. The sanctioning authority is a Desk Officer Revenue and Forest Depart, Mantralaya, Mumbai. It is not possible

for the prosecution to explain as to why earlier summons with report were not returned by the concerned police station. I do not find any justification in the observations made by the learned Judge that the prosecution is not interested and diligent in prosecuting the case. Thus, imposition of the costs twice for the same reason is unwarranted and uncalled for. Hence, following order is passed.

Order

I. Writ Petition is hereby allowed in terms of prayer clauses **“B” & “C”**.

II. Writ Petition is disposed off accordingly.

Rule is made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

...

aaa/-