

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

CRIMINAL APPLICATION NO. 3168 OF 2015

State of Maharashtra ..APPLICANT

VERSUS

Bhagaji Piraji Sonawane ..RESPONDENT

....
Mr. D.R. Kale, APP for applicant.
Mr. N.L. Jadhav, Advocate for respondent.
....

**CORAM : INDIRA K. JAIN, J.
DATED : 4th APRIL, 2016**

ORDER :

. This is an application for leave to appeal under Section 378(1) (3) of the Code of Criminal Procedure against judgment and order dated 26.03.2015 passed by learned Special Judge (P.C. Act), Aurangabad in Special Case No. 7 of 2009. By the said judgment and order, the sole respondent was acquitted of the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. It is the case of prosecution that accused was serving as Sectional Engineer in Municipal Corporation, Aurangabad. Complainant Sayyad Ahemad Bahauddin was a civil contractor for construction of buildings, roads and drainages. On 26.12.2006 a contract to erect drainage line was given to the complainant. Work order was issued. He

completed the work and requested the accused to take measurement of work done and prepare bill. On 01.03.2007 he approached accused. It is alleged that accused demanded illegal gratification of Rs.7,000/-. Since complainant had shown his inability to pay such amount accused told complainant that he would reduce Rs.2,000/- but he has to pay Rs.5,000/-.

3. On the same date complainant reported the incident to Anti Corruption Bureau, Aurangabad. A trap was arranged. It was successful. After completing investigation, charge-sheet came to be filed.

4. During trial prosecution examined in all three witnesses. On appreciation of evidence of prosecution witnesses Trial Court came to the conclusion that there was no valid sanction to prosecute the accused. The evidence of complainant and other witness was found doubtful. Considering the nature of evidence, Trial Court held that prosecution has failed to establish the charge. In consequence thereof accused was acquitted.

5. This Court has gone through the evidence of prosecution witnesses. Even if the prosecution case is accepted as it is then also refusal of sanction by the competent authority would be a biggest hurdle in the success of prosecution.

6. Further it is pertinent to note that offence was registered on 01.03.2007. Sanction was sought on 07.01.2008. Same was refused on 26.06.2008. Accused retired from service on 30.09.2008 and charge-sheet came to be filed before the Court on 17.02.2009. These dates are significant to show that sanction was refused while accused was in service. After he retired charge-sheet came to be filed. In such a situation prosecution of accused would not be permissible in view of decision of the Hon'ble Supreme Court in ***Cittaranjan Das Vs. State of Orissa , (2011) 7 SCC 167.***

7. In the light of the above it is clear that prosecution has no case against the respondent. Application deserves to be dismissed. Hence the following order:

ORDER

- I) Leave refused.
- II) Criminal Application No. 3168 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)