

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

CRIMINAL APPLICATION NO. 3509 OF 2015

The State of Maharashtra

... Applicant

VERSUS

Bhimrao Shyamrao Katare

... Respondent

.....
Mrs R. K. Laddha, APP for applicant/State
Mr C. P. Sengaonkar, Advocate h/f Mr V. A. Bagdiya,
Advocate for respondent.
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CORAM : **INDIRA K. JAIN, J.**
DATE : **27TH JANUARY, 2016.**

PER COURT:

. Heard.

2. This application under Section 378(1)(3) of the Code of Criminal Procedure is for leave to appeal against the judgment and order of acquittal passed by the learned Special Judge (PCA), Vaijapur, Dist. Aurangabad, on 7th April, 2015 in Special Case No. 9 of 2012 (Old Case No. 35 of 2009) for the offences under

Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

3. The facts giving rise to the present application may be stated in brief as under :-

One Babasaheb Tupe was an agriculturist. He was in need of loan. He moved an application for loan to Dhanwantari Mahila Nagari Sahakari Sanstha. The entry regarding charge for the loan of Rs. 60,000/- was required to be noted in 7/12 extract . A letter was accordingly given to Talathi of the village. Talathi was requested to issue 7/12 extract entering the encumbrances on the land. It is alleged that accused who was working as Talathi at the relevant time demanded bribe of Rs. 100/- for issuing 7/12 extract with noting of encumbrances. Complainant Babasaheb told Talathi that he was not having money. Accused insisted to give Rs. 100/- and then only 7/12 extract as required would be issued. Having no option, complainant reported the matter to the Anti Corruption Bureau. The trap was arranged. According to prosecution, trap was successful. On completing investigation, charge-sheet was submitted to the Special Court.

4. Charge of the alleged offence came to be explained to the accused. He pleaded not guilty and claimed to be tried. During trial prosecution examined in all five witnesses. Considering the evidence of prosecution witnesses, trial Court came to conclusion that guilt of the accused is not proved beyond reasonable doubt and in consequence thereof, accused was acquitted of the charge. Being aggrieved the State has moved this application for leave to appeal.

5. Learned APP submitted that findings recorded by the trial Court regarding sanction and on merits are perverse as sanctioning authority was duly competent to issue sanction order to prosecute the accused and on merits, prosecution succeeded in proving that accused had demanded sum of Rs. 100/- through his son for issuing 7/12 extract.

6. Per contra, learned counsel for respondent submitted that findings recorded by the trial Court are proper and in accordance with the law. No perversity or unreasonableness can be noticed from the observations of the trial Court and therefore learned counsel prays to refuse leave to appeal.

7. With the assistance of the learned counsel for the parties, this Court has gone through the evidence of the prosecution witnesses. It is pertinent to note that, PW1 complainant Babsaheb has not fully supported the prosecution. He made ever changing statements before the Court. His evidence is not consistent.

8. It appears that at the time of the alleged trap, other independent persons were present. When complainant had not fully supported the prosecution, it was obligatory on the part of prosecution to examine other witnesses. Non-examination of independent witnesses though available can be said to be fatal to the prosecution case.

9. Further on going through the evidence and material placed on record, this Court has not noticed any perversity, unreasonableness or illegality in the findings recorded by the trial Court. In this premise this Court is not inclined to allow the application.

10. Hence Criminal Application No. 3509 of 2015 stands rejected.

[INDIRA K. JAIN, J.]

sgp