

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3647 OF 2015

The State of Maharashtra,
through Dy. Superintendent
of Police, Anti Corruption
Bureau, Ahmednagar

..Applicant

Versus

Manikrao Bappasaheb Dhakane,
Age 49 years, Occ. Service as
Agricultural Supervisor,
Circle Agriculture Office,
Bodhegaon, Tq.Shevgaon,
r/o. in the room of Rakhmaji
Shelke, Khandobanagar, Shevgaon,
originally r/o. Nagalwadi,
Ladjalgaon, Tq. Shevgaon,
Dist. Ahmednagar

..Respondent

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Mr.A.R.Kale, A.P.P. for respondent applicant -
State

Mr.K.D.Bade-Patil, advocate for respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 28, 2016

PER COURT :

Heard both sides.

2] Aggrieved by the acquittal of the respondent
from the offences punishable under Section 7,

13((1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, vide judgment and order dated 26th March, 2015 passed by the learned Special Judge (ACB), Ahmednagar in Special Case (ACB) No.7 of 2011, the State wants to prefer an appeal and therefore, present application for grant of leave to file appeal, is filed.

3] The respondent, during the relevant period, was working as an Agricultural Supervisor, Circle Agriculture Office, Bodhegaon, Tq.Shevgaon, Dist.Ahmednagar. The sister-in-law of the complainant namely, Kaushalya had proposed to prepare a field pond (Shet Tale). As per the scheme of the Government, for the said work, initially subsidy of Rs.82,240/- was sanctioned. It is the prosecution case that after completion of the pond, present respondent has measured the pond whereupon, an amount of Rs.73,693/- by cheque, was disbursed to her and the remaining amount was remained to be paid.

. In the circumstances, on 27th October, 2010, present respondent, over mobile phone, demanded an amount of Rs.5,000/- for disbursement of the balance amount. Therefore, the complaint came to be lodged with the Anti Corruption Bureau on 28th October, 2010.

. P.I. Shinde of Anti Corruption Bureau completed the investigation. Two panch witnesses from the Government departments including PW 3 – Suresh Sant, were called. Anthracene powder was applied to the decoy money. In the presence of the shadow panch witness, the respondent again made demand of Rs.5,000/- and accepted the said decoy money towards bribe. Thereupon, the Investigating Officer moved PW 1 – Krishnarao Deshmukh, Divisional Joint Director of Agriculture, Pune Division, for grant of sanction.

. The sanctioning authority in the sanction order at Exhibit 20, failed to mention that the

sanction is granted for the offence punishable under Section 7 of the Prevention of Corruption Act, though it has been mentioned that sanction to prosecute the respondent is granted for the offences punishable under Section 13(1)(c)(d) and (D)(ii) 13(2) of the Prevention of Corruption Act, 1988.

. It was gathered that the amount was sanctioned for the construction of a field pond ad-measuring 30 x 30 x 5 metres. It was, however, found that the said construction was ad-measured 45 x 20 x 3 metres.

4] The learned Special Judge did not appreciate the oral evidence including evidence of the complainant or the shadow panch witness regarding the trap and regarding acceptance of money. The learned Special Judge found that as there is no sanction to prosecute the respondent for the offence punishable under Section 7 of the Prevention of Corruption Act, other allegations of

committing offence under Section 13(1)(c)(d) and (D)(ii) 13(2) of the Act must also fail.

. Further, the learned Special Judge has wrongly found that while the field pond was to be constructed ad-measuring "30 x 30 x 5", it was found to be "45 x 20 x 3". The learned Special Judge not only failed to mention as to whether the said measurement was in metres or feet, even he wrongly found that the sanction was for the pond ad-measuring 30 x 30 x 5 (metres), as against the admitted fact that it was 30 x 30 x 3 (metres).

5] Learned A.P.P. for the applicant - State submits that the learned Special Judge failed to appreciate the oral evidence on record. Further, the learned Special Judge ought to have considered that a clerical mistake has occurred in not referring to Section 7 of the Prevention of Corruption Act. He further submits that even if

it is found that the sanction to prosecute the respondent for the offence punishable under Section 7 of the Prevention of Corruption is not granted, still, the sanction was granted for having committed criminal misconduct, as defined by Section 13 of the Prevention of Corruption Act. He further submits that a gross mistake was committed by the learned Special Judge, in not taking care regarding proper measurement of the pond.

6] Mr.Bade-Patil, learned counsel for the respondent submits that admittedly, it was duty of the present respondent only to measure the pond. He further submits that the measurement report would show that there was no pitching to strengthen the pond and therefore, the amount was deducted, as detailed supra. In the circumstances, he submits that the learned Special Judge has taken a reasonable view of the material on record.

7] Upon perusal of the material and reasoning forwarded by learned Special Judge, the salient feature in the present case would be that the learned Special Judge did not properly consider the material evidence on record.

. Further there would be an arguable case, as to whether, the sanction accorded by the sanctioning authority, is valid and what would be the effect of the mistake committed by the learned Special Judge in not properly appreciating the measurement of the pond.

8] In the circumstances, leave to file appeal is hereby granted. Present application is allowed and disposed of accordingly.

[M.T. JOSHI, J.]

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