

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

CRIMINAL APPLICATION NO. 3835 OF 2015

The State of Maharashtra

... Applicant

VERSUS

Ramesh Nanabhau Bhosale

... Respondent

.....
Mr S. P. Deshmukh, APP for applicant/State
Mr V. R. Dhorde Patil, Advocate for respondent.
.....

CORAM : **INDIRA K. JAIN, J.**
DATE : **27TH JANUARY, 2016.**

PER COURT:

1. This is an application under Section 378(1)(3) of the Code of Criminal Procedure seeking leave to file appeal against the judgment and order of acquittal passed by the learned Special Court (ACB), Ahmednagar on 24th April, 2015 in Special Case (ACB) No. 10 of 2013 for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. Heard at length Mr S. P. Deshmukh, learned APP for applicant/State and Mr. V. R. Dhorde, learned counsel for respondent. Perused record.

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

Accused was working as Supervisor in the office of Deputy Superintendent, Land Records, Tq. Parner, Dist. Ahmednagar. A decree for partition was passed in RCS No. 141 of 2005 by the competent court. Accused was appointed as Commissioner for effecting the partition as per the decree.

4. On 15th February, 2013 Nasir Bashir Pathan lodged complaint with Anti Corruption Bureau, Ahmednagar alleging therein that accused demanded Rs. 15000/- from him for effecting partition of Gut Nos. 263, 264, 265/1, 265/2 and 276 as per the order of the court in RCS No. 141 of 2005. On 12th February, 2013 accused visited the shop of complainant and inquired from him whether arrangement for money was made. Complainant told him that he would arrange money on 15th February, 2013 and then reported to ACB. On the report crime was registered. Investigation was made and charge-sheet came to be filed before the learned Special Judge.

5. Charge of the alleged offences was explained to the accused. He pleaded not guilty and claimed to be tried. During trial, prosecution examined in all four witnesses. Considering the

evidence of prosecution witnesses, trial Court found that sanction was not accorded by the competent authority, the authority while granting sanction did not apply its mind and demand of alleged bribe was not established. In consequence thereof, accused was acquitted. Being aggrieved State has filed this application for leave to appeal.

6. Learned APP submitted that evidence of PW1 Sham Dattatray Khamkar, Deputy Director of Land Records clearly indicates that he was the competent authority to accord sanction and findings recorded by the trial Court in respect to the sanction are against the evidence on record.

7. Regarding merits of the case, learned APP submitted that trial Court has failed to appreciate the evidence in proper perspective and findings recorded are *per se*, illegal and perverse.

8. Per contra, learned counsel for the sole-respondent vehemently contended that accused has fairly accepted the receipt of amount on behalf of Sanjay Dhamne who is his brother-in-law and who used to supply chicken to complainant. Prosecution has utterly failed to prove the demand. Sanction was not accorded by the

competent authority. Complaint was lodged after inordinate delay due to animosity between the parties. It is submitted that trial Court has properly appreciated the evidence of prosecution witnesses and in view of the admissions elicited in cross-examination of complainant, accepted the defence raised by the accused. The learned counsel submits that, this is not a fit case to intervene in the order of acquittal and prays to refuse the leave to appeal.

9. With the assistance of the learned counsel for the parties, this Court has gone through the evidence of PW1 sanctioning authority Deputy Director of Land Records, PW2 Complainant – Nasir Bashir Pathan and PW4 Investigating Officer Police Inspector More. PW3 panch Syed Qayyum was declared hostile and he did not support the prosecution.

10. On going through the evidence of PW1, it can be seen that sanction order Exh. 26 was issued by him to prosecute the accused. PW1 was working as Deputy Director, Land Records at Pune. He admitted in cross-examination that, accused was appointed by the Divisional Commissioner and the Divisional Commissioner is the superior authority of the Deputy Director of Land Records. The sanction in the case was not issued by the Divisional Commissioner,

who appointed the accused in a special case as he had crossed the age limit at the time of initial appointment.

11. Another ground on which sanction was not held legal and valid by the trial court was that the sanctioning authority had not applied its mind and mechanically issued the order. It is admitted by PW1 that on examination of papers, it was revealed that consent decree for partition was passed and the officer was duty bound to effect partition in accordance with the decree passed by civil court. Complainant was demanding his share in each gut numbers during partition. The officer informed him that, while effecting the partition he would get the share in one gut number and not in various gut numbers. It is further admitted by the sanctioning authority that on 21st April, 2012 accused addressed a letter to Deputy Superintendent of Land Records, Parner informing that he was not in a position to effect partition due to dispute between the parties and returned the papers. All these facts which have been elicited in the cross-examination of sanctioning authority were not considered at the time of granting sanction. The trial court therefore was right in observing that sanction order was issued without proper application of mind and since it was not by the Divisional Commissioner, the trial Court held that the same was not by the competent authority.

12. On merits accused raised very bold and clear defence. He admitted that he had accepted Rs. 15000/- from the complainant. In this connection accused submitted that Sanjay Dhamne, his brother-in-law was the supplier of chicken. Accused used to collect payment of chicken on behalf of Sanjay Dhamne from the complainant. At the relevant time, complainant asked him to collect the amount of Rs. 15000/- on behalf of Sanjay Dhamne and called him at his shop. So accused went to the shop of complainant and collected amount of Rs. 15000/- on behalf of Sanjay Dhamne.

13. It can be seen from the cross-examination of PW2 Nasir Bashir Pathan that he admits almost all the suggestions put to him regarding defence of the accused. Considering the admissions in the cross-examination of complainant, trial Court found that accused could show that his defence is probable and acceptable.

14. It is pertinent to note that, work of effecting partition as per decree was completed on 21st January, 2013. It is alleged by complainant that, demand was made on 12th February, 2013. Complaint was lodged on 15th February, 2013. The delay in lodging

complaint had not been satisfactorily explained by the prosecution. PW3 panch witness was the independent witness. He did not support the prosecution.

15. In the above premise no arguable case for the prosecution is made out. Application is devoid of substance and merits. Criminal Application No. 3835 of 2015 stands rejected.

[INDIRA K. JAIN, J.]

sgp