

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3909 OF 2015

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

..Applicant

Versus

Kailas Baburao Kapade

..Respondent

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Mr.N.T.Bhagat, APP for applicant - State

Mr.V.D.Sapkal, advocate for respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 07, 2016

PER COURT :

Heard both sides.

2] Aggrieved by the acquittal of the respondent/
accused from the offences punishable under Section
7, 13(1)(d) read with 13(2) of the Prevention of
Corruption Act, the State wants to prefer an
appeal and therefore, present application for
grant of leave to file appeal, is filed.

3] The prosecution case, in short, is that the complainant – Uttamrao Nalge had purchased two pieces of land at village Sangvi-Dumala on 13th January, 2011 and 4th February, 2011 and wanted that his name be entered in the revenue record and 7/12 extract be handed over to him. Therefore, he met the present respondent, who was then working as Kamgar Talathi of the village. The respondent, however, made a demand of Rs.5,000/-. After negotiation, it was reduced to Rs.2,000/-. The respondent told the complainant that even the certified copy of the 7/12 extract was ready, but the same would be handed over to him upon payment of the bribe amount. In the circumstances, the complaint came to be filed with the office of the Anti Corruption Bureau on 3rd March, 2011.

4] The Investigating Officer collected two panch witnesses including PW 3 – Ramchandra and shadow panch witness – Dilip Jagtap (who expired before

the trial could begun). The trap was arranged on 4th March, 2011. At the time of the trap, the complainant first paid the amount towards revenue assessment. A receipt was passed and the respondent had handed over the certified copy of the 7/12 extract the complainant and thereupon, the respondent asked for payment of the bribe amount. In the circumstances, the decoy money, which was smeared with anthracene powder, was handed over by the complainant to the respondent. Necessary panchnama was, thereafter, prepared. Sanction was obtained and the respondent was prosecuted.

5] The complainant deposed on the lines of the prosecution case regarding his repeated demands for carrying entries and passing of the certified copy of the 7/12 extract and about the demands of money made by the respondent time and again. He also deposed about the transaction that took place

at the time of the trap. During cross-examination, the complainant hesitated in accepting that in the year 2007, he was found in possession of the illegal stock of sand in front of his house and the Tahsildar had imposed fine upon him. Further, ultimately, he admitted the said fact. He also admitted that on 28th May, 2008, he had made a complaint against the present respondent seeking his transfer. A true copy of the said complaint was admitted by him at Exhibit 25. Considering all these facts on record, learned Special Judge has acquitted the respondent.

6] Learned A.P.P. for the applicant – State submitted that merely because the shadow panch witness has died, it could not have been cause for acquittal of the respondent. He submitted that the deposition of the complainant would very well show that after payment of the amount towards the revenue assessment, the complainant had passed the

decoy money and the same was later on, found on the person of the respondent.

7] Upon hearing both sides, in my view, the independent corroboration to the prosecution case that during the trap, the respondent had again made demand for bribe amount, has failed. Even in absence of the said corroboration, the court could have come to the conclusion that the prosecution case is proved beyond the reasonable doubt on the basis of strait-forward testimony of the complainant. However, the admitted facts, as detailed supra, would show that as a matter of prudence, corroboration was required as the complainant already had a deep animus against the respondent.

8] In the circumstances, in my view, the reasons forwarded by learned Special Judge cannot be faulted with. Present application for grant of

leave to file appeal is, therefore, rejected.
Leave refused.

[M.T. JOSHI, J.]

kbp