IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5580 OF 2015

State of Maharashtra ..APPLICANT

VERSUS

Ashok Raghunath Idhate ..RESPONDENT

....

Mrs. R.K. Ladda, APP for applicant.
Mr. R.S. Deshmukh, Advocate for respondent.

....

CORAM : INDIRA K. JAIN, J.
DATED : 5th APRIL, 2016

ORDER :

. By this application State of Maharashtra seeks leave to appeal under Section 378(1)(3) of the Code of Criminal Procedure against the judgment and order dated 28.07.2015 passed by the learned Special Judge (ACB), Ahmednagar in Special Case No. 8/2011 acquitting the respondent of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. Heard Mrs. Ladda, learned APP for State and Mr. Deshmukh, learned Counsel for respondent. Perused record.

3. Prosecution case in brief is as under:-

Complainant Mr. Harihar Vijayrao Garje is a practicing lawyer at Ahmednagar District Court. He had ancestral property. There was a dispute between family of complainant and one Gahininath Honaji Damale and so civil suit was filed in Civil Court, Pathardi.

4. On 17.12.2010 an incident took place in the disputed agricultural land. It was alleged that family members of Gahininath Damle assaulted father of complainant. A report was lodged to Pathardi Police Station by complainant and cross complaint was lodged against complainant and his family members by Gahininath Damle. Accused was attached to Pathardi Police Station as Police Head Constable at the relevant time. Investigation of both the crimes registered on the complaints of complainant and Gahininath Damle was handed over to accused.

5. It is the case of complainant that on 18.12.2010 at around 8.00 p.m. he received phone call on his mobile from mobile of accused informing him that opposite party had given him Rs.50,000/- for arresting complainant. It is alleged that accused demanded Rs.15,000/- from complainant to avoid his arrest. Complainant told accused that amount demanded was huge and after negotiation it was decided that complainant would pay Rs.5,000/- initially and remaining Rs.10,000/- should be paid after filing of charge-sheet.

6. On 23.12.2010 complainant informed Anti Corruption Bureau, Ahmednagar office regarding demand of illegal gratification by accused. Trap was arranged. It was successful. After sanction was accorded charge-sheet was filed before the Special Judge.

7. Charge of alleged offence was explained to accused. He pleaded not guilty and claimed to be tried. Prosecution examined in all four witnesses to substantiate the alleged guilt of accused. Considering evidence of P.W.2 Superintendent of Police Mr. Krishnaprakash Rajmohan Prasad Trial Court found that sanction accorded to prosecute the accused was not legal and valid. On merits Trial Court held that material evidence in the form of CDR and conversation between accused and complainant was withheld. Evidence of complainant and panch witness does not inspire confidence and in consequence held the accused not guilty.

8. With the assistance of learned Counsel for both the parties this Court has gone through the evidence of sanctioning authority, complainant, panch witness and investigating officer. So far as sanction to prosecute is concerned, it is admitted by P.W. 2 Mr. Prasad in his evidence that note-sheet was prepared initially. The said note-sheet was brought on record in cross-examination of the witness. It can be seen from the note-sheet that it has passed through various tables and

at the end it bears an endorsement of Superintendent of Police. In the entire note-sheet there is no mention that sanctioning authority had gone through papers of investigation in Crime No. 3165/2010. Prima facie it appears that relying upon the note-sheet sanction order was issued. Note-sheet was prepared by officials of the concerned department. The sanction order Exhibit 22 does not fulfill necessary requirement of Section 19 of the Prevention of Corruption Act. In view of this Trial Court had rightly held that sanction order was not legal and valid.

9. So far as merits are concerned, even if it is assumed that trap was successful and acceptance of amount is proved by prosecution absolutely there is no iota of evidence to show initial demand on 18.12.2010. The investigating officer had admitted that initial demand was on phone. Thereafter also many times accused made phone calls to complainant. It was obligatory on the investigating agency to collect CDR. Investigating agency did not collect CDR during investigation though mobile numbers of accused and complainant were available.

10. Another serious infirmity in the case of prosecution is the absence of primary evidence regarding alleged conversation between accused and complainant.

11. Besides, there was unacceptable delay in reporting incident to the concerned department. According to complainant initial demand was made on 18.12.2010. It is a matter of record that a report was submitted to Anti Corruption Bureau on 23.12.2010. Neither complainant nor investigating officer explained delay in lodging FIR.

12. In the light of the above this Court finds that prosecution has no case on merits. Hence the following order:-

O R D E R

I) Leave refused.

II) Criminal Application No. 5580 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)