

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 5614 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
ARVIND VASUDEO ZIRADKAR

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APP for Applicant : Mr. S. D. Ghayal.

Advocate for Respondent : Mr. P. K. Phale.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 02nd April, 2016.

P.C.:

. By this application under Section 378 (1) (3) of the Code of Criminal Procedure Applicant / State seeks leave to appeal against the judgment and order dated 31st July, 2015 passed by learned Special Court (ACB), Ahmednagar in Special Case (ACB) No.6 of 2013 acquitting the sole Respondent / Accused of the offences punishable under Sections 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of prosecution that on 25th April, 2011, complaint was lodged by Sachin Pralhad Mule alleging therein that Accused working as Deputy Superintendent, Land Records at

Shevgaon, District Ahmednagar demanded Rs.11,000/- from him for carrying measurement of agricultural land which was to be converted to non-agricultural land. A trap was arranged. It was successful. Pre and post trap Panchanamas were drawn. On completing investigation charge-sheet was submitted before learned Special Judge.

4 During trial prosecution examined in all 3 witnesses, PW-1 sanctioning authority Mr. Manik Gutte, PW-2 Complainant Sachin Mule and PW-3 Vilas Kusalkar shadow Panch. Considering the evidence of witnesses Trial Court came to the conclusion that sanction accorded by sanctioning authority was not legal and valid and evidence of Complainant as well as shadow witness cannot be relied upon in view of material contradictions and omissions brought on record. Non examination of Investigating Officer was treated as fatal to the prosecution case and accused was acquitted. Being aggrieved present application for leave to appeal has been preferred by State.

5 So far as sanction under Section 19 of the Prevention of Corruption Act is concerned this Court has gone through the evidence of PW-1 sanctioning authority. PW-1 was Deputy Secretary, Revenue Department and signed sanction order to prosecute the Accused. According to the witness Minister (Revenue) was the competent

authority to remove Deputy Superintendent of Land Records from the post. A note-sheet was put up before the Honourable Minister and sanction was granted by Honourable Minister to prosecute the Accused. It is pertinent to note that note-sheet on the basis of which sanction order was issued was not brought before the Court and so sanction order was held not legal and valid.

6 On facts it was brought on record in the evidence of Complainant that initially demand was made on 20th April, 2011. No complaint was lodged in respect of the same. Accused raised defence that there was exchange of words between him and Complainant as Complainant was signing documents by making signatures of his wife. He stated that after Complainant and Panch witness arrived to his house they were offered soft drink and Complainant told him to handover copy of challan to Mr. Ghodechor. Accused asked Complainant to keep copy of challan in the hand bag. That time Complainant kept the amount in his bag. By the time he could ask the Complainant Accused was apprehended. As Accused immediately offered explanation possibility of raising afterthought defence was ruled out.

7 It can be seen from the evidence of Complainant that he

was the person having grudge against Accused. Evidence of Complainant and shadow Panch was not consistent. On the contrary material infirmities and inconsistencies were noticed in the depositions of the two. Prosecution did not bother to examine Investigating Officer. Needless to state that in such a case prosecution was duty bound to examine the Investigating Officer. Non-examination of Investigating Officer was the another reason to doubt the prosecution case.

8 In the above premise this Court finds that prosecution has no case on merits. Even if leave is granted no purpose would be served. Hence the following order –

ORDER

- I. Criminal Application No.5614 of 2015 stands dismissed.
- II. Leave refused.

[INDIRA K. JAIN, J.]