

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

CRIMINAL APPLICATION NO. 5655 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Ramesh Ghanshyam Mhaske and Another

..RESPONDENTS

.....
Mrs. R.K. Ladda, APP for applicant.

Mr. G.K. Naik-Thigale, Advocate for Respondent No.2.

.....

CORAM : INDIRA K. JAIN, J.

DATED : 4th APRIL, 2016

ORDER :

. This is an application under Section 378(1)(3) of the Code of Criminal Procedure seeking leave to appeal against the judgment and order dated 18.06.2015 passed by the learned Special Judge (P.C. Act), Aurangabad in Special Case No. 11/2006. By the said judgment and order respondents were acquitted of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) and Section 12 of the Prevention of Corruption Act, 1988.

2. Heard Mrs. R.K. Ladda, learned APP for State and Mr. Naik-Thigale learned Counsel for respondents. Respondent No.1 died during pendency of application. Application against Respondent No.1 has abated.

3. It was the case of prosecution that at the relevant time Accused/Respondent No.1 was serving as Talathi. Accused/Respondent No.2 is brother of Accused No.1. Bhagwan Thite was the complainant. It is alleged that on 13.10.2005 and 14.10.2005 both the accused had been to house of complainant and Accused No.1 through Accused No.2 demanded Rs.5,000/- from Bhagwan Thite for effecting mutation entry in respect of an agricultural land. Complainant was reluctant to pay the amount so he reported the incident to Anti Corruption Bureau, Aurangabad. Trap was arranged. It was successful. After investigation charge-sheet was filed.

4. Considering the evidence of sanctioning authority it was found that sanction was not legal and valid. Accused No.1 was working as Talathi and competent authority to accord sanction was the Collector. In this case sanction was granted by Sub-divisional Officer.

5. On merits complainant's evidence was found doubtful. He was serving in private company at Aurangabad which was far away from the village where the agricultural land was situated. It has come on record that 6-7 hours journey was required to be taken to reach the agricultural land. There was no clinching evidence to show that owner of land has cogent reason to execute power of attorney regarding the land in favour of complainant. The testimony of complainant was not supported by the

material witness. Prosecution withheld the star witness. In the absence of corroboration to the testimony of complainant and since best evidence was kept away by the prosecution without any reason this Court finds that prosecution has no case on merits.

6. Another important factor to refuse leave to appeal is that alleged demand was by Accused No.1. Admittedly he is dead. In the absence of evidence of demand no purpose would be served even if leave is granted. Hence the following order:

ORDER

- I) Leave refused.
- II) Criminal Application No. 5655 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)