

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

CRIMINAL APPLICATION NO. 5691 OF 2015

State of Maharashtra ..APPLICANT

VERSUS

Sahebrao Madhavrao Sugave ..RESPONDENT

....
Mr. S.N. Morampalle, APP for applicant.
Mr. Satyajit Bora, Advocate for respondent.
....

**CORAM : INDIRA K. JAIN, J.
DATED : 7th APRIL, 2016**

ORDER :

1. By this application State of Maharashtra seeks leave to appeal against the judgment and order dated 19.08.2015 passed by the learned Special Judge (ACB), Nanded in Special Case No. 10/2011 acquitting the sole respondent of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Morampalle, learned APP for State and Mr. Bora, learned Counsel for respondent. Perused record.

3. Prosecution case in brief is as under:-

Accused was working as Gram Sevak of village Brabada,

Taluka Naigaon, District Nanded. Complainant Prabhu Datta Machewad was resident of same village. A scheme of 'Gharkul' (Housing Scheme) was launched in the village. Complainant requested the accused to allot him a house in 'Gharkul' scheme. It is alleged that accused demanded Rs.5,000/- for the same. When complainant had expressed his inability to pay Rs.5,000/- accused reduced the demand to Rs.2,000/-. On 19.11.2009 complainant approached Anti Corruption Bureau, Nanded and lodged report. Trap was arranged twice between 20.11.2009 and 30.11.2009 but failed.

4. It is the case of complainant that on 01.12.2009 accused called complainant on phone and told him to come near Lotus Hospital at Doctor Lane Nanded along with money. Complainant along with Anti Corruption Bureau officials went to the place. This time trap was successful. Accused accepted the amount. Pre-trap and post trap panchnamas were drawn. Statements of witnesses were recorded. On completing investigation charge-sheet was submitted to Special Court.

5. Charge of the alleged offences was framed against accused. He pleaded not guilty and claimed to be tried. To substantiate its case prosecution examined in all four witnesses P.W.1 Prabhu Machewad complainant, P.W.2 Prakash Rachetwar panch witness, P.W.3

Dipendrasingh Kushvah sanctioning authority and P.W.4 Ashok Kadam investigating officer. On evaluation of prosecution evidence Trial Court noticed that reliance cannot be placed on the testimony of complainant in view of material admissions elicited in cross-examination that he had received notice dated 17.11.2009 from Gram Panchayat and amount was paid to accused in pursuance to the resolution passed by Gram Panchayat. Trial Court also observed that evidence of panch witness was not sufficient to prove the acceptance of amount towards bribe by the accused and held him not guilty of the charge.

6. With the assistance of learned Counsel for parties this Court has gone through the evidence of prosecution witnesses. So far as sanction is concerned Trial Court held that the same was legal and valid. Evidence of complainant would indicate that in his examination in chief he supports the contents of FIR. He states that when he approached accused to allot him house under the housing scheme, accused demanded Rs.5,000/-, he expressed his inability due to poor financial condition to pay Rs.5,000/- so accused reduced the amount to Rs.2,000/-. He further states that on 01.12.2009 accused told him to come to a place as stated above and when complainant along with panch witness followed by Anti Corruption Officials went there accused accepted the amount.

7. In the cross-examination complainant admitted that he received notice dated 17.11.2009 on 18.11.2009 and amount of Rs.2,000/- was paid by him to accused towards donation in pursuance to resolution passed by Gram Panchayat. In view of this important admission elicited in cross-examination of complainant prosecution was duty bound to get it clarified from the witness but this exercise was not undertaken during examination of complainant. On the basis of this admission it can be safely concluded that prosecution has no case on merits. Hence the following order:-

ORDER

- I) Leave refused.
- II) Criminal Application No. 5691 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)