

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL MISC. APPLICATION NO. 130 OF 2015**

**IN**

**STAMP NUMBER MAIN NO. 947 OF 2015**

CENTRAL BUREAU OF INVESTIGATION,  
ANTI CORRUPTION BRANCH.

... Applicant

Versus

SHRI PRAVIN KUMAR.

... Respondent

Shri Joseph Vaz, Advocate for the Applicant.  
Shri G. Naik, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 23rd June, 2016

P.C.:

This is an application for leave to appeal against acquittal. The respondent/accused was charged for the offences punishable under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (Act, for short).

2. The prosecution case in brief is that the respondent was a Garrison Engineer in MES Vasco. The complainant is a partner of M/s. S.K. Salgaonkar and Brothers, a construction firm which was awarded work of construction of 24 deficient married accommodation for Navy at Nofra, in respect of which a contract was executed on 14/06/2000 for an amount of Rs.2,25,85,369.65. The respondent was supervising the construction work. The completion

of the work was defaulted. The complainant had sought extension for completion of the construction till 20/08/2002. The case is that for such extension the respondent had demanded illegal gratification of Rs.5,000/- for recommending the extension. According to the prosecution, the demand was made on 19/08/2002 while the illegal gratification of Rs.5,000/- was accepted by the respondent in his office on 20/08/2002.

3. At the trial, the prosecution examined in all seven witnesses including the complainant, panch witnesses and the Investigating Officer and produced the contemporary record of the Investigation. For the present purpose, the evidence of the complainant Umesh (PW1), panch Kishor (PW6) and the Investigating Officer Shri Yadav (PW7) are material. The learned Special Court by a judgment and order dated 10/09/2014 in Special Case No.12/2013/T has acquitted the respondent.

4. The perusal of the judgment shows that after appreciating the evidence led by the prosecution the Special Court in para 79 of the judgment has found that the prosecution has failed to establish that the cash was received by the respondent in his hand. It was found that the prosecution has also failed to prove that the respondent has demanded any money by way of illegal gratification and a serious doubt is raised on whether the alleged bribe money was found on the rack or in the drawer of the accused. The learned Trial Court has

found that the prosecution has failed to explain as to how both hand-washes of the accused tested positive for phenolphthalein, when according to the prosecution, accused had received the envelope with cash only in his left hand. Lastly, the learned Trial Court has found that inasmuch as the complainant had previously filed complaints against the respondent, there was a probable reason shown for false implication.

5. I have heard Shri Vaz, the learned Special Public Prosecutor for the applicant and Shri G. Naik, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the evidence and the impugned judgment.

6. Prima facie, at this stage, it appears that although the learned Special Judge observed in para 79 that the prosecution has failed to show that the cash was received by the respondent in his hands, there is evidence of the complainant and the other witnesses that the currency notes and the envelope which was smeared with phenolphthalein powder was received by the respondent in left hand. The learned Special Judge has considered some discrepancies about the gesture made by the respondent, which was interpreted as a demand for bribe. Prima facie, it appears that apart from the gesture the complainant also says that there was an oral demand. It appears that the fingers of the left hand of the respondent were found to be smeared with the phenolphthalein powder as per the report of the

chemical analyzer. On overall consideration, I think that a case for grant of leave is made out.

7. In the result, the Criminal application is allowed. Accordingly, leave to appeal against acquittal is granted. Office shall register the criminal appeal which shall be treated as admitted. The learned Special Court shall take action under Section 390 of the Criminal Procedure Code.

C. V. BHADANG, J.

NH