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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATIION NO. 25 OF 2016

The State of Maharashtra ..Applicant

Vs.

Nutan Shrikant Bhosale ..Respondent

Ms. G.P. Mulekar for Applicant-State.
Mr. Aniket Nikam for Respondent.

CORAM: A.S. GADKARI, J.

DATE : 10th June 2016.

P.C.

1 Heard the learned APP for the Applicant-State and the learned Counsel for the respondent and with their assistance I have perused the entire record produced before me.

2 This is an application filed under Section 378(3) of Cr. P.C. for leave to file appeal against the Judgment and Order of acquittal dated 31.10.2015 passed by the learned Special Judge (Anti-Corruption) Pune in Special Case No.25 of 2015 thereby acquitting the respondent under

Section 7 of Prevention of Corruption Act, 1988.

3 It is the prosecution case that the respondent was working as Assistant Co-Operative Officer in the Office of the Sub-Registrar, Co-Operative Societies, Pune. The complainant was intending to register their Co-Operative Society having 23 tenaments. The respondent demanded Rs.500/- per flat/shop for registration of the said Society. There were 23 members of the said Society. After deliberation the respondent agreed to accept Rs.400/- per flat/shop totalling to Rs.9200/- for issuance of registration certificate of the said Society. It is further prosecution case that the respondent thereafter accepted an amount of Rs.5000/- and made further demand of Rs.4200/-. As the complainant did not wish to pay the balance amount of illegal gratification, he approached the Anti-Corruption Bureau and lodged the complaint. That the demand was verified on a mobile phone in the presence of the Police Officer attached to Anti-Corruption Bureau by keeping the said mobile on speaker mode and the said conversation was recorded. That the said conversation was subsequently transcribed in presence of panch-witness. That the date of incident/trap was 9.5.2014 when the complainant visited the office of the respondent to pay the balance amount. The respondent was not present in the office, but the complainant collected the Society registration certificate from the office of the respondent. As the respondent made demand for money other than legal charges, an offence under Section 7 of Prevention of Corruption Act, 1988 was registered, investigated and after completion of investigation the chargesheet came to be filed. The learned Trial Court by its Judgment and Order dated 31.10.2015 was pleased to acquit the respondent on the ground that neither the demand nor acceptance is proved beyond reasonable doubt.

4 It is to be noted that the alleged demand was recorded on mobile phone in the absence of any independent witness. It further appears from the record that a certificate as contemplated under Section 65(b) of the Indian Evidence Act is also not produced before the Trial Court in support of the said recording. It is the admitted fact that on the date of alleged trap i.e. on 9.5.2014, the respondent was on leave and she was not present in the office. That the Society registration certificate i.e. the document in question was already prepared and was available in the Office of the Sub-Registrar of Co-Operative Societies, Pune which was collected by the complainant. Thus there was no further demand from the respondent. The evidence on record shows that the prosecution has utterly failed in proving the demand by the respondent itself.

5 In view of the above, I find that the learned Trial Court has taken just, right and proper view in acquitting the respondent from the charges levelled against her. The view taken by the Trial Court is a probable view. I find no infirmity in the impugned Judgment and Order dated 31.10.2015 passed by the learned Trial Court either in law or on facts. The application being devoid of any merits, is accordingly dismissed.

(A.S. GADKARI,J.)