

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.31 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Smt. Anamika Malhotra for the Applicant
Mr.Vishal Kolekar for Respondent No.1.

CORAM : A.S.GADKARI, J.**DATE : 27th June, 2016**

P.C.

Heard the learned APP. and the learned counsel for the respondent and with their able assistance I have perused the entire record produced before me.

2) This is an application under Section 378(3) of the Code of Criminal Procedure for leave to file appeal against the impugned Judgment and Order dated 4.11.2015 passed by the Special Judge, Pune under Prevention of Corruption Act in Special Case No.47/2013 thereby acquitting the respondent from the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3) It is the prosecution case that the complainant namely Mayuresh Prakash Argade had applied under Right to Information Act with the District Rehabilitation Officer, Zilla Parishad Office, Pune for obtaining copies of the register of the acquisition of lands from Village Vegare and Laware for Temghar Dam Project. With reference to the said application, the complainant received the

notice from the Office of District Rehabilitation Officer to attend the office on 31.12.2012. The respondent was working as a Clerk in the said office i.e. in the office of the District Rehabilitation Officer. The complainant went to the said office and met the respondent who was looking after the work of supply of copies. It is the further prosecution case that the accused asked the complainant to pay Rs.416/- by challan towards the fees and Rs.416/- for photo copying charges. As the complainant was not having that much amount he told the respondent that he will pay the amount on the next day. The complainant thereafter on the next day i.e. 1.1.2013 again went to the said office. The applicant filled up the said challan but as the bank was closed the amount was not accepted. The complainant subsequently on 2.1.2013 went to the office of the applicant and paid an amount of Rs.416/- to the respondent for zeroxing the documents. It is the further case of the prosecution that the respondent asked the complainant that "what about him". On enquiry by the complainant the accused demanded Rs.3000/- for his work and after negotiations the amount was settled at Rs.2000/-. That the respondent directed the complainant to bring the amount within two hours and took away the copies as required by the complainant. As the complainant was not willing to pay the said demanded amount, he approached the Anti Corruption Bureau and lodged complaint.

Initially the demand was verified from electric device i.e. voice recorder. As the same was not successful the Investigating Agency decided to verify the demand in presence of panch witnesses. After complying all the formalities trap was led. The respondent was

caught red handed while accepting the bribe amount of Rs.2000/-. After completion of investigation, the Investigating Agency filed charge sheet before the Special Court.

4) The prosecution in support of its case examined in all four witnesses. The Trial Court after recording the evidence and hearing the parties was pleased to acquit the respondent by impugned Judgment and Order dated 4.11.2015.

5) The evidence on record discloses that the alleged demand which was recorded on voice recorder does not reveal any demand at the instance of the respondent. It is to be noted here that the prosecution has even not taken any care or pains to produce the certificate as contemplated under amended Section 65(B) of the Indian Evidence Act. During the course of cross examination of the complainant it has brought on record that on 31.1.2012 there was a tiff between the complainant and the respondent which ensued in hot exchange of words. The prosecution has come up with a case that though the respondent did not demand the alleged illegal gratification by words, it was a demand by gesture. It has also come in the evidence that anthracene powder was found on both the hands of the respondent. It is the defence of the respondent that due to the earlier quarrel the complainant was having grudge against him and with a view to implead in a crime the said amount was thrust in the shirt pocket of the respondent by the complainant. It appears from the evidence on record that the complainant had every reason to falsely implicate the respondent in the present crime due to earlier quarrel which arose out of the hot exchange of words between them on 31.12.2012 and the alleged trap was led on

2.1.2013.

6) After taking into consideration the entire evidence available on record I am of the considered view that the learned Trial Court has rightly acquitted the respondent. The finding recorded by the Trial Court is a probable view, in view of the facts and circumstances of the present case. I am of the view that the Trial Court has not committed any error while acquitting the respondent. There is no need to interfere with the Judgment and Order dated 4.11.2015.

7) The application being devoid of merits is accordingly dismissed.

(A.S. GADKARI, J.)