

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 40 OF 2016

The State of Maharashtra. ... Applicant.
Versus
Arun Mahadeo Hadke. ... Respondent.

Mrs. A.A. Mane, APP for State.

Mr. Sandeep Salunkhe, advocate for respondent.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 6, 2016

P.C.:

1 Heard the learned APP for State and learned Counsel for the respondent.

2 By this application, the State of Maharashtra is seeking leave to appeal challenging the Judgment and Order dated 30/9/2015 delivered by Special Judge, Pune in Special Case No. 24 of 2013 thereby acquitting the respondent of the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3 Perused the evidence of the complainant as well as the evidence of the shadow witness P.W. 2 Vasant Ramchandra Kewale. In the substantive evidence, the witness has stated that the complainant had called upon the accused on his cell phone in the presence of the panchas. The accused had called the complainant to Chandani Bar situated at Vadgaon. The raiding party alongwith the complainant entered into Chandani bar. The complainant had shown the panch the person who was the accused. The witness has identified the accused before the Court. It is stated in the examination-in-chief that **“Some talk took place between the complainant and the accused and thereafter, the complainant took out the amount from his left side shirt pocket to his right hand. The accused took tainted notes by his right hand, counted them by both hands and put them in left side pocket.”**

4 It is pertinent to note that in this case, investigating agency had provided tape recorder to the complainant to record the conversation between the complainant and the accused at the time of the transaction. In the cross-examination, the shadow witness has

specifically stated that he did not hear the conversation between the complainant and the accused at the time of transaction.

5 P.W. 3 Vinod Satav happens to be the Police Inspector who was investigating officer. He has deposed before the Court that the conversation recorded on the tape recorder was typed on paper and prepared its cassette. The cassette was seized and sealed. It is further stated that the voice sample of the accused was taken by providing script to read. It is pertinent to note that the investigating officer has not deposed before the court the exact talk between the complainant and the accused at the time of acceptance of the tainted notes. It appears from the record that although voice sample was obtained, there is no verification nor there is substantive evidence to that effect. The learned Special Judge has rightly arrived at a conclusion that the demand has not been proved.

6 It is an admitted position that the demand is sine qua non for acceptance. The acceptance of tainted notes in the offence of demand need not necessarily be taken to be a case of acceptance of the illegal gratification. The prosecution has to prove that there was a

demand seeking ill-legal gratification that the tainted notes are accepted pursuant to the said demand. Moreover, the learned Special Judge has rightly observed that mutation entry was already recorded in 7/12 extract and no work was pending with the accused. The sanctioning authority i.e. P.W. 4 Sanjay Asawale has admitted in the cross-examination that there is no authority to Talathi regarding refusal or acceptance of the mutation entry. The sanctioning authority when confronted with the original record and proceedings has specifically admitted in the cross-examination that the name was effected on 7/12 extract prior to lodging of complaint.

7 Taking into consideration the nature of evidence adduced by the prosecution, it cannot be said that the findings recorded by the learned Special Judge deserves to be interfered with. No case for interference is made out. Hence, the application seeking leave to appeal is rejected. The same stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)