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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALS) No. 42 of 2016.

The State of Maharashtra

..Applicant/Appellant.

Vs

Audumbar Digambar Dhumal

..Respondent.

Smt. G.P. Mulekar, APP for the applicant-State.

CORAM : A.S.GADKARI, J.

DATE : 21st June, 2016

P.C.

1. Heard the learned APP and perused the entire record produced before me.

2. This is an application for leave to appeal under Section 378 (3) of the Cr.P.C. against the Judgment and Order dated 30.11.2015 passed by the learned Special Judge, Barshi in Special (ACB) Case No. 3 of 2014 thereby acquitting the respondent for the offences punishable under sections 7, 12, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988.

3. It is the case of the prosecution that the complainant Dayanand Gambhire was resident of village Kasari, Taluka Barshi,

District Solapur. That on 18.12.2008 he was served with the summons and was directed to remain present on 19.12.2008 at 11:00 a.m. in Police Station, Vairag for an enquiry pertaining to a NC case bearing No. 1228/08. In response to the said summons, he attended Vairag Police Station at about 12:00 noon along with Mr Rambhau Jagtap. Mr Shinde was the Police Hawaldar on duty who kept the complainant in lock-up till 4:00 p.m. on the said day and subsequently demanded Rs.1000/- for releasing the applicant on bail. Police Hawaldar Shinde directed the complainant to pay the said amount to the present respondent who was working as a Police Constable with the said Police Station. The complainant assured to pay the said amount on 22.12.2008. However, as the complainant could not arrange for the said money, he could not pay the amount. It is further the case of the prosecution that on 27.12.2008 the respondent had been to the field of the complainant and directed him to pay the amount to the said Police Hawaldar Shri Shinde on 30.12.2008. The respondent also gave a telephone number for conversation on the over leaf of the summons to the complainant.

4. As the complainant was not intending to pay the said illegal gratification to the said Police Hawaldar Shri Shinde, he lodged a complaint with the Anti Corruption Bureau (ACB), Solapur. It is the prosecution case that conversation between the complainant and the

Police Hawaldar Shri Shinde was recorded on mobile phone and after due verification, the complaint is lodged and the ACB decided to lay a trap. After completion of necessary formalities, a trap was laid on 13.12.2008. It is the further allegation against the respondent that the respondent demanded illegal gratification on behalf of the Police Hawaldar Shri Shinde.

5. After completion of investigation, the Investigating Agency filed final report as contemplated under section 173 (2) of Cr.P.C. before the competent Court of jurisdiction, which was culminated in Special Case No. 3 of 2014. The learned Trial Court after recording the evidence of the prosecution witnesses and after hearing the parties to the said case, was pleased to acquit the respondent from all the charges levelled against him by the impugned Judgment and Order dated 30th September, 2015.

6. The evidence adduced by the prosecution which is on record reveals that tape-recorder used for verification of demand of bribe was switched off and the conversation could not be recorded. In the cross-examination, the complainant has admitted that the respondent after being offered bribe amount, categorically denied to accept the same. It is to be noted that as a matter of fact the trap was unsuccessful. It is a fact on record that the respondent never demanded and/or accepted the alleged amount of bribe. It is also to

be noted here that a minute perusal of the record, it further reveals that the prosecution has failed to produce the necessary certificate under section 65 (b) of the Indian Evidence Act for placing reliance on alleged conversation recorded on an electronic device at the time of trial. It is important to note that the Police Hawaldar Shri Shinde against whom it is alleged that, he demanded bribe amount, is not impleaded as an accused in the present case and no incriminating material at all is presented or produced by the prosecution against the present respondent.

7. PW 3 Shri Sanjay Deputy Superintendent of Police, Solapur in his evidence, has admitted that Police Hawaldar Shri Shinde was instrumental in demanding the bribe but he has not been made as an accused.

8. After taking into consideration the entire material available on record, it creates strong doubt in the mind of this Court about the genuineness of the case instituted by the prosecuting agency against the respondent, particularly in the absence of Hawaldar Shri Shinde who has not been impleaded as an accused in the present case. The learned Trial Court, after taking into consideration the entire evidence available on record has rightly acquitted the respondent from all the charges.

9. In view of the facts of the present case it clearly appears

to me that, the view taken by the Trial Court is a probable view. In my opinion, no interference is called for with the impugned Judgment and Order. The application, being devoid of any merit, is accordingly dismissed.

(A.S.GADKARI, J.)