

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1164 OF 2016

Navneet Kathod Patil

.....Petitioner

V/s.

State of Maharashtra

....Respondent

Mr. Sunil Kale h/f Mr. Omkar G. Nagwekar Advocate for Petitioner.
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 22, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein happens to be employee of Kalyan-Dombivli Municipal Corporation (KDMC). Petitioner is accused in Special Case No. 2 of 2012 pending before Special Judge wherein petitioner is being prosecuted for offence punishable under section 7, 13 (1) (d) r/w section 13 (2) of Prevention of Corruption Act, 1988. Petitioner had filed an application before Special Judge demonstrating therein that the sanction accorded for prosecution is bad in Law as the Sanctioning Authority had no powers to remove the Petitioner from service. It was in these circumstances that the

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Petitioner had prayed prosecution be called upon to prove that the sanction accorded for prosecution is a valid sanction.

4) It appears from the records that the co-accused had filed an application seeking discharge. Learned Special Judge had considered both the application and by a common order dated 21/02/2015 was pleased to reject the applications.

5) Learned counsel for the Petitioner submits that at the time of rejecting the application, learned Special Judge has suo moto enquired into as to whether the sanction accorded for prosecution was a valid sanction or not and has arrived at a conclusion that it was a valid sanction. In fact, this conclusion/inference could be drawn only after recording substantive evidence and therefore such pre-mature observations by the learned Special Judge were unwarranted. However, the issue that the according of sanction be decided as a preliminary issue cannot be taken into consideration as it would form part of trial and would be recorded in due course at the time of recording evidence. The prayer in the present petition for remanding the matter for fresh consideration also cannot be granted. It would simply protract the proceedings. In view of this, petition deserves to be dismissed. However, it is

made clear that learned Special Judge shall not take into consideration the observations made by him in the order dated 21/02/2015 and shall reserve the conclusion only after evidence as a whole is recorded at the time of trial. Hence, following order.

- (i) Writ petition stands dismissed.
- (ii) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)