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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 53 OF 2016

The State of Maharashtra		..Applicant
Vs.		
Madhukar Namdev Patole & Anr.	.	..Respondents

Ms. Anamika Malhotra, APP for Applicant-State.
Mr. Aniket Nikam for Respondents.

CORAM: A.S. GADKARI, J.

DATE : 20th June 2016.

P.C.

1 This is an application filed under Section 378(3) of Cr. P.C. for leave to file appeal against the Judgment and Order dated 23.11.2015 passed by the learned Special Judge under Prevention of Corruption Act, Pune in Special Sessions Case No.58 of 2013 thereby acquitting the respondents under Sections 7, 13(1)(d) read with Section 13(2) and 12 of Prevention of Corruption Act, 1988.

2 Heard the learned APP for the Applicant-State, the learned counsel for the respondents and also perused the entire record including the notes of evidence, produced before me.

3 It is the prosecution case that the respondent No.1 was working as a Inspecting Officer with the Caste Verification Department, Government of Maharashtra. The complainant namely Babu Pimple was pursuing M.C.A. Degree along with his friend Kishor D. Kabade in D.Y. Patil College, Pune. They belonged to "Kunabi" caste, however, in their educational record, their caste was mentioned as "Maratha" due to which they were not getting the benefits of O.B.C. and therefore the complainant and his friend applied for Caste Validity Certificate with the said Department. On 4th July 2012 personal hearing was given to the complainant by the concerned Committee which comprises of the respondent No.1 and two other members. The decision on the caste certificate was reserved. After a period of about four days, the complainant enquired with the concerned Department about his certificate, however, it was informed that the same is not ready. During the said period, the complainant came into contact with the respondent No.2 who used to work as a peon in the said office. After discussion, the respondent No.2 informed the complainant that they will have to pay Rs.30,000/- each to the respondent No.1 for their work. It is the further prosecution case that after negotiations, the respondent No.2 demanded Rs.25,000/- each for getting their work done. As the complainant was not ready and willing to pay the

said gratification to the respondents, the complainant lodged the complaint with the P.W.-3 Yashwant A. Satpute, P.I. Anti-Corruption Bureau, Pune. The said complaint is at Exhibit -10, on record. It is the further prosecution case, that the conversation pertaining to the demand by respondent No.1 was recorded through Digital Phone Recorder. After Investigating Agency realised that there was a demand of illegal gratification by the respondent No.1, it decided to lay a trap on 29.7.2012. On 29.7.2012 the Investigating Agency could not lay the trap, it was further decided to lay a trap on 31.7.2012. The complainant produced 100 currency notes of denomination of 500 each. That after completing the necessary and requisite formalities, the raiding party proceeded to the office of the respondent No.1. It is the prosecution case itself that on 31.7.2012 the respondent No.1 was retired from services and when the raiding party went to the spot/office felicitation function of the respondent No.1 was going on. Therefore trap of that day was withdrawn by preparing panchanama (Exhibit-20). As there was no verification on 31.7.2012 for alleged gratification by respondent No.1, the complainant and the raiding party again went to the office of the respondent No.1 on 1.8.2012 by adopting necessary procedure. That on 1.8.2012, the complainant met the respondent No.2 and informed him that he has brought the said amount. The respondent No.2 thereafter took the

complainant on motorcycle for bringing lunch for respondent No.1 near one shop namely “Big Boss”. The respondent No.2 thereafter accepted the bribed amount of Rs.50,000/-. The respondent No.2 was apprehended by the Investigating Agency after receipt of signal from the complainant. After completion of investigation, the Investigating Agency filed chargesheet. The prosecution examined in all three witnesses. The learned Trial Court after recording the evidence and hearing the parties, was pleased to acquit the respondents from all charges by the impugned Judgment and Order.

4 It is to be noted here that even though it is alleged by the Investigating Agency that the alleged demand at the instance of the respondent No.1 who was working as a Inspecting Officer with the Caste Verification Department was recorded on digital phone recorder by the PW-1 Complainant in presence of panch witness Mr. Kamathe, the prosecution has not produced any certificate as required under Section 65 (b) of the Indian Evidence Act in support of the said contention, as the said alleged demand was recorded on an electronic device. It is further to be noted here that the demand at the instance of the respondent No.2 is also not proved by the prosecution. That on the date of alleged trap i.e. on 1.8.2012 the respondent No.1 had already retired from services and the prosecution has not brought on record any cogent material exhibiting the

fact that the caste certificate of the complainant and his friend were withheld by the respondent No.1 even after his retirement. The record further reveals that in the cross examination of the panchawitness, PW-2-Sunil Kamthe, certain admissions have been brought on record which are detrimental to the interest of the prosecution. The said witness, PW-2, has admitted that before going to the office of respondent No.1 a phone call was made to him for verification of demand to which the respondent No.1 replied that he does know the complainant and no work of the complainant is pending with him. Though the respondent No.2 has impersonated himself to be a peon of the respondent No.1, as a matter of fact during the course of investigation, it was revealed that he was a private person. As the prosecution has failed to prove beyond reasonable doubt the basic demand initially at the instance of the respondent No.1 and subsequently respondent No.2, finding of alleged tainted amount in the possession of respondent No.2, after the retirement of respondent No.1 on 31.7.2012 loses its significance. The prosecution has also failed to prove the alleged initial demand by the respondent No.1 which was allegedly made in presence of the friend of complainant Kishor Kabade, by not examining him.

5 After taking into consideration the entire material available on record, I am of the view that the prosecution has failed to prove beyond

reasonable doubt the charge levelled against the respondents. In view of the facts and circumstances of the case, the view adopted by the Trial Court is a probable view and no interference by this Court is warranted.

6 The application being devoid of merits, is accordingly dismissed.

(A.S. GADKARI,J.)