FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.59 OF 2016

State of Maharashtra vs. Rajendra Ganpati Yadav

Office Notes, Office Memorandam of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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

CORAM : A.S.GADKARI, J.
DATE : 22nd June, 2016

P.C.

This is an application under Section 378(3) of the Code of Criminal Procedure seeking leave to file appeal against the Judgment and Order dated 31.8.2015 passed by the learned Special Judge, Kolhapur in Special Case No. 3 of 2010, acquitting the respondent from the offence punishable under Section 7, 13(1)(D) read with 13(2) of the Prevention of Corruption Act, 1988.

2) Heard the learned APP and also perused the entire record produced before me including the notes of evidence and the Judgment and Order dated 31.8.2015.

3) It is the prosecution case that the complainant Dr. Krishnant Laxman Patil resident of Kanthewadi, Taluka Radhanagari, District Kolhapur had purchased certain land admeasuring about 1.78 R on 15.12.2008 from Laxman Dhondi Patil after execution of registered sale deed. The respondent was serving as Talathi at Village Rashivade Budruk. The complainant for effecting his name in

the revenue record had been to the Talathi Office and met the respondent. The respondent after perusing the documents informed him that the said mutation entry cannot be effected as 60-R of land is in the name of the wife of seller i.e. Smt. Shantabai Laxamn Patil and unless and until the separate sale deed is executed the said mutation entry cannot be effected. It is the further prosecution case that for effecting the revenue entry in the revenue record the respondent demanded an amount of Rs.2000/-as and by way of illegal gratification. The said amount was subsequently reduced to Rs.1500/-. As the complainant did not intend to pay the illegal gratification to the respondent, he lodged complaint with the Anti Corruption Bureau. The Investigating Agency there after verified the said demand by giving a phone call on the mobile number of the respondent. After completion of necessary formalities a trap was arranged on 10.6.2009 in the office of the respondent at Village Rashivade Budruk. It is the further prosecution case that the respondent accepted the said amount of Rs.1000/- from the complainant and he was apprehended on the spot by the investigating agency. After completion of investigation the charge sheet was filed. The prosecution in support of its case examined in all three witnesses. The learned Trial Court after recording the evidence and after hearing the parties was pleased to acquit the respondent from the charges levelled against him by the impugned Judgment and Order dated 31.3.2015.

4) The evidence on record discloses that the alleged verification of demand of the bribe amount by respondent was effected by giving a phone call by complainant to the respondent.

The speaker of the said mobile was switched on and an audio cassette was inserted in the mini tape recorder which was provided by the investigating agency. It clearly appears from the record that the prosecution has failed to produce the mandatory certificate under Section-65(b) of the Indian Evidence Act in support of its case while proving the alleged tape recorded conversation and/ or on the electronic device. This leads me to the irresistible conclusion that the prosecution has failed to prove the demand itself.

It is further to be noted here that on the date of trap i.e.10.6.2009 the mutation entry in the revenue record in the name of the complainant was already effected and no work at the instance of the respondent was pending. It has further come in the evidence of the complainant that on the date of trap the respondent was not in charge of the office at Village Rashivade Buduruk and he was promoted as Circle Officer and was deputed to Circle Office at Gargoti. That the mutation entries were already effected in the revenue record prior to the transfer of the respondent as Circle Officer. The defence of the respondent was that, the said amount was twisted and thrashed in his shirt pocket as the complainant was having grudge against the respondent. It is the specific defence of the respondent that, the complainant wanted to have entry of more area of land in his name in the 7/12 extract which was not mentioned in the sale deed and as the respondent did not adhere to the request of the complainant, the complainant was having grudge against him. It further appears from the record that the evidence of the accused is a probable defence in view of the facts of the present case.

The learned Trial Court after taking into consideration the entire evidence available on record has recorded a finding of acquittal in favor of the respondent, which according to me is a probable view adopted by the Trial Court. I am of the further opinion that there is no need to interfere with the well reasoned order passed by the Trial Court.

5) The application being devoid of merits and is accordingly dismissed.

(A.S. GADKARI, J.)