

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 66 of 2016.

The State of Maharashtra

..Applicant/Appellant.

Vs

Badan Dharma Rathod and Anr

..Respondents.

Smt. Anamika Malhotra for the applicant-State.

CORAM : A.S.GADKARI, J.

DATE : 13th June, 2016

P.C.

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

2. This is an application under section 378 (3) of Cr.P.C. for leave to file appeal against the Judgment and Order dated 18.9.2015 passed by the learned Additional Sessions Judge, Malshiras, District Solapur in Special Case No. 4 of 2010 thereby acquitting the respondents for the offences under sections 7 and under section 13 (1) (d) read with section 13 (2) read with section 12 of the Prevention of Corruption Act, 1988.

3. It is the case of the prosecution that the respondent no.1 was working as a Talathi of village Garvad. Complainant Bajirao Magar was a resident of the said village. That there is 50 acres of agricultural land

divided in nine to ten gat numbers belonging to the father of the complainant Bajirao Magar and his five brothers and three sisters. The father of the complainant and his mother decided to partition the said agricultural land amongst themselves in the year 2009. The sisters of the complainant relinquished their right in the joint family property. The complainant along with his cousin, Shri Anna Magar and uncle Shivaji Magar moved an application before the Tahsildar for separation of Khata Patrak as per the partition which had taken place earlier to it. In the Tahsil Office they met the respondent no.1 who was working as Talathi of village Garvad. The respondent no.1 demanded the sum of Rs.50,000/- towards illegal gratification other than legal remuneration for doing the said work. It is further the prosecution case that the respondent no.2 was working as freelance agent in the office of the Tahsildar and used to help any person in submitting necessary applications and was doing miscellaneous work before the concerned authority. The respondent No.2 also used to do follow up work of the persons from the said Tahsil, who had filed applications with the said office. It is the further prosecution case that the complainant Bajirao Magar, at the first instance, had collected contribution from the family members of Rs.20,000/- and paid it to the respondent no.1. That after some days, the respondent no.1 came along with the respondent no.2 to the house of the complainant, obtained signatures of the father of complainant on rough

sketches, maps, consent letters and other documents. That the respondent no.1 again asked for balance amount of Rs.30,000/-. It is the prosecution case that even after payment of Rs.20,000/-, the respondent no.1 did not do anything about the complainant's work and, therefore, on 9.9.2009 the complainant lodged a written complaint to the Anti Corruption Bureau, Solapur. After complying with the necessary formalities, the Investigating agency laid a trap on 9.9.2009. The respondent No.2 was apprehended while accepting an amount of Rs.10,000/- which according to the prosecution was the tainted amount.

4. After completion of investigation, the Investigating Agency filed final report as contemplated under section 173 (2) of Cr.PC. before the Court of competent jurisdiction. 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 respondents from all the charges levelled against them by the impugned judgment and order dated 18.9.2015.

5. The record discloses that in the present case, the demand at the instance of the respondent no.1-Government Servant, itself, is not proved by the prosecution. It is further to be noted here that there is no verification in the presence of a panch witness, or otherwise, for the alleged demand by the respondent no.1. That it is also the prosecution case that the respondent no.2 was working as an independent agent in

the Tahsil Office. The admissions, which have been brought on record by the respondents during the course of evidence, show that it was the respondent no.2 who had claimed that amount for himself as his professional charges for helping the complainant and his family members in getting the necessary entries effected in Khate-Patruk pursuant to the partition amongst the family members of the complainant. The admissions given by PW no.1 Bajirao Magar (complainant) and PW no.4 Annasaheb Magar support the defence taken by the respondent no.2. In view of the facts mentioned above, I am of the considered opinion that the prosecution has failed to prove the guilt of the respondents beyond reasonable doubt.

6. Apart from the afore stated facts, in view of the facts of the present case and the evidence on record, it appears to me that the view adopted by the learned Trial Court is probable view and the Judgment and Order passed by the learned Trial Court in my view does not suffer from any infirmity either in law or on facts. No interference is called for with the impugned Judgment and Order. The application, being devoid of merit, is accordingly dismissed.

(A.S.GADKARI, J.)