

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.75 OF 2016

State of Maharashtra vs. Tanaji Annappa Davari

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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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 22.1.2016.

2) Heard the learned APP and also perused the entire record pertaining to Judgment and Order dated 22.1.2016 passed by the Special Judge (Anti Corruption), Kolhapur in Special Case No.10/2014 thereby acquitting the respondent from the offences punishable under Section 7 read with Section 13(2) of the Prevention of Corruption Act.

3) It is the prosecution case that the respondent was working as police constable and was attached to the Court at Kagal, District Kolhapur as Court Duty Constable. The complainant Shivaji Devaba Hajare had lodged a Criminal Complainant in the Court of J.M.F.C., at Kagal, wherein process was issued against the accused persons mentioned in the said complaint. It is the further

prosecution case that for serving the notices/summons upon the accused persons in the said complaint the respondent demanded an amount of Rs.100/-. As the complainant was not intending to pay the gratification to the respondent, he lodged a report with the Anti-Corruption Bureau. That, verification of the demand was recorded on a digital device provided by the Anti Corruption Bureau to the complainant. It is the prosecution case that the respondent did not meet the complainant and directed him to go to the police station and to meet Mr. Shingate. After completion of investigation, the Investigating Agency submitted charge sheet under Section-7 and 13 of the Prevention of Corruption Act i.e. only on the basis of the alleged demand made by the respondent from the complainant of the alleged amount which was other than legal.

4) The learned Trial Court after recording the evidence and after hearing the parties was pleased to acquit the respondent from the charges by impugned Judgment and Order dated 22.1.2016.

5) The record discloses that the alleged conversation of demand between the complainant and the respondent was recorded in the digital voice recorder which was provided by the Anti-Corruption Bureau, however, the prosecution agency has failed to produce the certificate as contemplated under Section 65(B) of the Evidence Act at the time of trial and therefore, the alleged demand which was allegedly recorded by the complainant on electronic device cannot be taken into consideration. The learned Trial Court has rightly placed its reliance on the decision of the Supreme Court in the case of Anvar P. V. vs. P. K. Basheer and others reported in AIR 2015SC 180 equivalent to (2014) 10 SCC 473 while refusing to take

into consideration the alleged conversation recorded on a electronic device. There is no other evidence against the respondent on record.

6) The view adopted by the Trial Court while acquitting the respondent is a probable view. I am of the opinion that there is no need to interfere with the well reasoned order passed by the Trial Court. The application being devoid of merits, is accordingly dismissed.

(A.S. GADKARI, J.)