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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 93 of 2014.

The State of Maharashtra

..Applicant/Appellant.

Vs

Premchand Rajmani Mishra

..Respondent.

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

Mr M.S. Mohite for the respondent.

CORAM : A.S.GADKARI, J.

DATE : 13th June, 2016

PC.

1. Heard the learned APP, the learned counsel for the respondent and also perused the entire record produced before me.

2. This is an application for leave to appeal under Section 378 (3) of the Cr.PC. against the Judgment and Order dated 19.12.2013 passed by the learned Special Judge (Anti Corruption), Thane, in Special Case No. 6 of 2006 thereby acquitting the respondent for the offences punishable under section 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988.

3. It is the case of the prosecution that the respondent was working as Junior Engineer in Water Department of the Mumbai Municipal Corporation. Complainant Bansilal Choudhary was having a

job in DRS Transport Company, Bhiwandi as a Branch Manager. The said Company had purchased the land bearing survey no. 86 and 87 situated at village Kopargaon for constructing warehouse and the construction of the same was started in the year 2004. The said construction continued till the year 2005. It is further the prosecution case that one Ramsul Nana Patil had lodged a complaint with Mumbai Municipal Corporation stating that the construction of the warehouse which was being carried by the said complainant was on the land belonging to the villagers and threatened him for not carrying out the construction. The said Ramsul Patil made a complaint with the Mumbai Municipal Corporation, Water Department as the water pipe line was adjacent to the side of the property of complainant's Company. The Complainant's Company received a notice on 18.12.2004 and thereafter the respondent with Ramsul Patil, BMC Officials and other 3-4 persons visited the warehouse of the complainant and informed him that the vehicles of the complainant are passing through the BMC land and the same is not permissible. That BMC will demolish the warehouse. The complainant was called by the respondent at BMC office at Kapurbavdi office. The respondent demanded Rs.25,000/- for not taking any action against the said construction. The respondent thereafter coerced the complainant that he will take steps against the said construction if his demand is not satisfied. The complainant thereafter lodged a complaint with Narpoli

Police Station, Thane. After complying with the necessary formalities a trap was laid on 7.2.2005 and the respondent was apprehended with tainted currency notes of Rs.10,000/- by the Investigating Agency.

4. After completion of investigation, the Investigating Agency filed final report contemplated under section 173 (2) of Cr.P.C. before the competent Court of jurisdiction, which was culminated in Special Case No.6 of 2006. 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 respondent from all the charges levelled against him by the impugned Judgment and Order dated 19.12.2013.

5. The learned Trial Court has recorded a finding that after the trap, the tainted currency notes were kept in an envelope which was not sealed on the spot of the incident. The said finding is recorded on the basis of an admission given by the Investigating Officer during the course of his evidence. The Investigating Officer has further admitted in his cross-examination that panch witness (PW no.2) who was handling the tainted currency notes, at the time of inspection under ultraviolet ray (Exh.26), has not mentioned in the said panchnama that the tainted currency notes were kept in the envelope on the spot of the incident. It is, thus, clear from the evidence on record that there was every probability of the tainted currency notes being tampered with at the instance of the Investigating Agency or any other interested person as the basic

requirement of sealing the seized articles/envelope on the spot was not complied with by the Investigating Agency. As the prosecution has failed to comply with the basic pre-requisite of sealing of the seized articles on the spot, the Trial Court has proceeded to acquit the applicant on that main ground.

6. In view of the facts of the present case it clearly appears to me that, the view taken by the Trial Court is a probable view. In my opinion, no interference is called for with the impugned Judgment and Order. The application, being devoid of any merit, is accordingly dismissed.

(A.S.GADKARI, J.)