

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.81 OF 2015

The State of Maharashtra .. Applicant
Versus
Rajendra Ramesh Adhav .. Respondent

Mrs.P.P. Bhosale, APP for the applicant State.

Mr.Rohan Nahar, Advocate for the respondent.

CORAM : ABHAY M. THIPSAY, J.

DATED : 1st APRIL 2016

P.C. :

1 The respondent was prosecuted on the allegation of having committed offences punishable under Section 7 and section 13(2) r/w section 13(1)(d) of the Prevention of Corruption Act, 1988. The Special Judge, Pune after holding a trial, acquitted him. The State of Maharashtra is aggrieved by the said order of acquittal, and is, by the present application, seeking leave to Appeal from the said order of acquittal.

2 I have heard Mrs.P.P. Bhosale, learned APP in support of the application. I have heard Mr.Rohan Nahar, learned counsel for the respondent who appears pursuant to notice.

3 With the assistance of the learned counsel, I have gone through the impugned judgment. I find that the learned

Judge categorically held that the prosecution case had been proved beyond reasonable doubt. In other words, the learned Judge accepted the case of the prosecution that the respondent had demanded and accepted an amount of Rs.4,000/- as illegal gratification as a motive for releasing the tempo of the original complainant which had been detained by the respondent. The learned Judge also accepted that the prosecution had proved beyond reasonable doubt that the respondent had misused his official position and had availed of pecuniary advantage by using corrupt or illegal means.

4 In spite of arriving at such a conclusion, the learned Judge still acquitted the respondent as he held that there was no valid sanction to prosecute the respondent. Sanction as is required under section 19 of the Prevention of Corruption Act was, in the instant case, granted by a Deputy Commissioner of Police. The contention that Dy. Commissioner of Police was not competent to remove the respondent, was accepted by the learned Special Judge. The Dy. Commissioner of Police could not point out the delegation of any authority to grant sanction in his favour, if at all such authorization was permissible in law.

5 The learned APP is unable to state how the finding about the sanction being invalid, as recorded by the learned Special Judge, is erroneous.

6 In these circumstances, leave refused.

7 Application is rejected.

8 Since, however, the cognizance of the alleged offences was taken on the basis of an invalid sanction, the trial is *non-est*, and as such, it needs to be clarified that nothing shall prevent the State of Maharashtra from prosecuting the respondent afresh after obtaining a valid sanction as contemplated under section 19 of the Prevention of Corruption Act.

(ABHAY M.THIPSAY, J)