

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.108 OF 2015

The State of Maharashtra .. Applicant
Versus
Dhondiram Bapuso Patil and anr .. Respondents

Mr.A.R.Patil, APP for the applicant State.

Mr.Tejas Hilage, Advocate for the Respondents.

CORAM : ABHAY M. THIPSAY, J.

DATED : 1st APRIL 2016

P.C. :

1 This is an application filed by the State of Maharashtra, seeking leave to Appeal from the judgment and order dated 6th June 2015 delivered by the Special Judge, Kolhapur, acquitting the respondents who were accused in a case tried by him. The respondent no.1, at the material time, was a public servant and was accused for having committed offences punishable under Section 7 and section 13(2) r/w section 13(1)d) of the Prevention of Corruption Act. The respondent no.2 who was not a public servant was accused of having committed of an offence punishable under Section 12 of the said Act.

2 I have heard Mr.A.R. Patil, learned APP in support of the application. I have heard Mr.Tejas Hilage, learned counsel for the respondents.

3 I have been taken through the impugned judgment.

4 So far as the respondent no.2 is concerned, the learned Special Judge observed that though she had allegedly accepted the bribe amount and had thus allegedly abetted the commission of offences by the respondent no.1, there was no evidence that the respondent no.2 had any knowledge about the transaction that was to take place between the original complainant and the respondent no.1.

5 The learned Judge observed that there was nothing to show that the respondent no.2 was having any knowledge that the amount which the respondent no.1 asked her to accept, was bribe amount, and that, as such, she could not be said to have abetted of an offence punishable under section 7 of the Prevention of Corruption Act. This finding of the learned Judge appears to be correct.

6 So far as the respondent no.1 is concerned, the learned Special Judge observed that that he had demanded and accepted illegal gratification by corrupt means and by abusing his position, and that, he had secured pecuniary advantage by corrupt or illegal means by abusing his position as a public servant and was thus, guilty of criminal misconduct, was satisfactorily proved. However, inspite of these findings, he acquitted the respondent no.2 also, as according to him, the sanction to prosecute the respondent no.1 as contemplated under Section 19 of the Prevention of Corruption Act, was not proper or valid. The

learned Special Judge observed that the sanction had been granted not by the authority competent to grant it, but by the authority sub-ordinate to it. He also observed that the sanction order passed previously – which was also not by the competent authority but by an authority sub-ordinate to it – was subsequently 'amended'. The sanctioning authority conceded that it was because the sanction order, as was passed earlier, might have proved favourable to the respondent no.1. This conclusion arrived at by the learned Special Judge is based on the evidence that was adduced during the trial and the cross-examination of the sanctioning authority – PW 4.

7 Since it appears that the sanction for the prosecution of the respondent no.1, as was granted in this case was not valid or legal, the order of acquittal cannot be interfered with.

8 Leave refused.

9 Application is rejected.

10 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)