

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CRI.APPLN.NO.215/2016

6 CRIMINAL APPLICATION NO. 215 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
SHIVKANT S/O VISHVANATH SONKAMBLE

...
APP for Applicant : Shri S.P.Tiwari
Shri Gaikwad Ashok P., Adv., for respondent/sole.

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CORAM : P.R. BORA, J.
Dated: September 25, 2017

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PER COURT :-

1. Heard learned APP for the applicant and learned Counsel appearing for sole respondent.
2. The State has filed the present application seeking leave to appeal against the judgment and order dated 24.4.2015 passed by the learned Special Judge (P.C.Act), Aurangabad, in Special Case No.2/2008.
3. The respondent herein was prosecuted vide the aforesaid Special Case for the offenses punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The learned Special Court has acquitted the accused of the charges levelled against him. According to the learned A.P.P., though there was sufficient evidence on record, on some technical grounds the learned Special Court has disbelieved the evidence of the prosecution and has acquitted the accused. Learned A.P.P.

agp/-

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submitted that the demand and acceptance both have been successfully proved by the prosecution. The learned Counsel submitted that inspite of the fact as aforesaid, having regard to some minor discrepancies in the statement of the prosecution witnesses, the learned Special Court has acquitted the accused. Learned A.P.P. has, therefore, prayed for granting leave to appeal and hearing the matter on merits.

4. Learned Counsel appearing for the respondent has opposed the submissions made by the learned A.P.P. Learned Counsel, taking me through the observations made by the learned Special Court and, more particularly, bringing to my notice the discrepancies in the evidence of the complainant and Panch witnesses, submitted that the prosecution had failed in proving the guilt of the accused and the learned Special Court has rightly acquitted the accused of all the charges. Learned Counsel submitted that no case is made out by the State for granting leave to appeal. Learned Counsel pointed out that as has been observed by the learned Special Court, initially complaint was filed by the complainant against the Inspector of Metrology Department and not against the present respondent. Learned Counsel submitted that in so far as the demand and acceptance of the bribe is concerned, the evidence of the prosecution witnesses is not corroborating each other. Learned Counsel submitted that in such circumstances the benefit of doubt has rightly been given

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by the learned Special Court to the accused and, therefore, no interference is required in the impugned judgment and no permission can be granted for leave to appeal against the said judgment. Learned Counsel relied upon the following judgments:

- 1) 2008(4) Mh.L.J.(Cri) 429
Raju s/o Somla Pawar
vs.
State of Maharashtra.
- 2) 2006 (2) Mh.L.J. (Cri.) 905
Prabhakar s/o Balaji Bhoge
Vs.
State of Maharashtra.
- 3) 2009(1) Mh.L.J.(Cri)425
Arjun Bajirao Kale
Vs.
State of Maharashtra
- 4) 2009(3) Mh.L.J.(Cri.) 89
State of Maharashtra
Vs.
Pandurang Govind Raut.

5. I have carefully perused the impugned judgment and the evidence on record copies of which were made available for my perusal by the learned Counsel for the respondent. It is true that there are some minor discrepancies in the statements of the prosecution witnesses, however, the core fact that the complaint of the complainant was specifically against the respondent, and the

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amount was also specified and, accordingly, after the trap was laid, the demand and acceptance both have been proved by the prosecution evidence, it appears to me that the trial Court seems to have been swayed by some minor omissions and contradictions. It appears to me that the entire evidence will have to be re-scrutinized. At this juncture, though it may not be possible to examine entire evidence in detail, apparently, it appears that the case is made out by the State to grant leave to appeal so that the appeal can be heard on merits. Hence, the following order:

ORDER

1. Criminal Application (No.215/2016) is allowed and stands disposed of. Leave to prefer appeal granted.
2. The Appeal be registered in accordance with law. After registration of the appeal, learned Counsel Shri A.P.Gaikwad waives service for the respondent.
3. Call for R & P.
4. List the matter for admission after four weeks.

(P.R. BORA, J.)

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