

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO.1164 OF 2016

The State of Maharashtra,
Through Dy. Superintendent of Police,
Anti Corruption Bureau, Ahmednagar
[C.R. No.3022/2012 of Karjat P.S.]

.. Applicant
(Original Complainant)

VERSUS

Dhashrath Bapu Damare,
Age : 33 years, Occu : Business,
[Husband of Sau. Kishori Dashrath
Damare, Sarpanch of Village Benwadi,
Tq. Karjat, Dist. Ahmednagar]
R/o. Benwadi, Tq. Karjat, Dist. Ahmednagar

.. Respondent
(Original Accused)

...

APP for the applicant : Shri. S.P. Tripathi
Advocate for the respondent : Shri. H.U. Dhage

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**CORAM : P.R. BORA, J.
DATE : AUGUST 24, 2017**

PER COURT :

1. The State has filed the present application seeking leave to appeal against the Judgment and order passed by the Special Court at Ahmednagar on 01.01.2016 in Special Case (ACB) No.5 of 2013. The respondent herein was charge-sheeted by the Anti Corruption Bureau, Ahmednagar for committing offence punishable under Section 9 of Prevention of Corruption Act, 1988 (hereinafter

referred to as the 'Act'), and under Section 420 of the Indian Penal Code (hereinafter in short 'I.P.C.').

2. It was the case of the original complainant that, the accused had demanded Rs.7,000/- by way of bribe and has accepted Rs.5,000/- out of that for obtaining signature of his wife, who was at the relevant time working as sarpanch of village Benwadi. It was also the case of the prosecution that, the respondent i.e. original accused also committed an offence of cheating by signing the cheque in the name of his wife. The learned Special Court after having considered the evidence on record has acquitted the accused from both the offences. The State intends to file an appeal and therefore this is an application seeking leave to appeal.

3. Shri Tripathi, learned APP appearing for the State submitted that, the Special Court has adopted too technical approach and has failed in appreciating the evidence in proper perspective, which has resulted in unmeritorious acquittal of the accused. The learned APP submitted that, sufficient evidence was adduced by the prosecution in order to prove the guilt of the accused. The learned APP pointed out that, conversation was tape - recorded and the same has been completely proved by the prosecution witnesses, however the Special Court by referring to some variances here and there in the statements of witnesses has recorded a conclusion that, the said evidence cannot be depended upon. The learned APP submitted that, the demand as well as the acceptance are duly proved by the prosecution and in such circumstances, the entire evidence needs to

be rescrutinized. The learned APP, therefore, prayed for granting leave to appeal against the said Judgment and order.

4. The learned Counsel appearing for the respondent i.e. original accused opposed the submissions made on behalf of the State. The learned Counsel reading out the relevant paragraphs in the impugned Judgment submits that, the Special Court has rightly observed that the prosecution has failed to prove both the offences under Section 9 of the Act, as well as under Section 420 of the I.P.C. The learned Counsel further submits that, there is no evidence on record so as to suggest that, any such attempt was made by the respondent to influence the public servant. The learned Counsel submits that, in such circumstances, Section 9 of the Act was apparently inapplicable and no charge could have been framed for the said offence. The learned Counsel submits that, insofar as the offence of cheating is concerned, from the evidence on record in no case the respondent can be charged for the offence under Section 420 of the I.P.C.

5. I have carefully considered the submissions made on behalf of the learned APP and the learned counsel appearing for the respondent. On perusal of the impugned Judgment, charge framed by Court and other material placed on record, it appears to me that, there is substance in the submissions made by the learned APP. From the tape recorded conversation, the demand seems to have been primarily proved. The acceptance of the amount has also been proved though there is an explanation by the accused that, the said amount was accepted not way of bribe, but in connection with some other

transaction i.e. purchase of bricks from the complainant etc. The said evidence needs to be rescrutinized. It appears to me that, the entire evidence will have to be rescrutinized. It cannot be at this juncture said that, it was the case of clean acquittal or even benefit of doubt was liable to be given to the accused. I am, therefore, inclined to allow the present application. Hence the following order.

ORDER

1. Application is allowed.
2. The appeal be registered in accordance with law.

(PR. BORA, J)

ggp