

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

**909 CRIMINAL APPLICATION NO. 4831 OF 2016
WITH APPLN/4295/2017 IN APEAL/117/2016**

THE STATE OF MAHARASHTRA
VERSUS
SHAMRAO MAHADEO SHETE AND OTHERS

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APP for Applicant : Mr. R.B.Bagul
Advocate for respondent nos. 3 and 9: Mr. Soman Amar D
Advocate for respondent no.4: Mr. D.D.Chaudhari
Advocate for respondent nos. 5, 8 and 10 : Mr. Hemant Surve, Mr.
Mr. S.C.Arora
Advocate for respondent no.6: Mr. M.S.Kulkarni.
Advocate for respondent no.7: Mr.N.L.Choudhari
Advocate for respondent no.2: Ms. Bageshri M. Jarandikar

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CORAM : P.R. BORA, J.
Dated: October 31, 2017

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PER COURT :-

1. The State has filed present Application No.4831/2016, seeking leave to appeal against the judgment passed in Special Case No.11/2013 by the Special Judge, Nandurbar, decided on 12th of January, 2016. Criminal Application No.4295/2017 is filed by the complainant, namely, Rajendra Sadashiv Lokare with the same prayer. Criminal Appeal No.117/2016 is also filed by Complainant Lokare.

2. The respondents, who are hereinafter referred to as the accused, were prosecuted for the offenses punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, read with Section 120-B of the

IPC. The impugned judgment reveals that despite ample opportunities given to the prosecution for adducing evidence, no evidence was adduced. The evidence of the prosecution was, therefore, closed by the learned Special Judge and since no evidence has come on record proving the guilt of the accused, all the accused are acquitted of the offenses charged against them.

3. Shri Bagul, learned A.P.P., appearing for the State, submitted that having regard to the events which have occurred during the course of the trial, no blame can be attributed on the part of the prosecution for not adducing the evidence in the case before the trial Court. Learned A.P.P. submitted that the complainant, at whose instance the action was initiated against the accused, had filed the application to the State Government seeking appointment of a Special Counsel for conducting the said matter and his application was under consideration by the State Government. Learned A.P.P. submitted that on the said count, the learned Special Judge has also granted adjournment in the matter. Learned A.P.P. further submitted that the material on record shows that the prosecution has kept present the Panch witnesses and was ready to proceed with the matter by examining the Panch

witnesses and at that crucial time the accused filed an application praying for examining the complainant first before examining the panch witnesses. Learned A.P.P. submitted that aforesaid application was allowed by the Court and thus, the matter could not be proceeded further. Learned A.P.P. submitted that aforesaid order was challenged before the High Court, however, the same has been confirmed and as such the prosecution was bound to examine the complainant first before examining the panch witnesses. Learned A.P.P. submitted that despite all honest efforts made by the prosecution agency, the presence of the complainant could not be secured and, thus, his evidence could not be adduced before the Court. Learned A.P.P. further submitted that, eventually, bailable warrant was required to be issued against the complainant and then complainant appeared before the Court but again showed his reluctance to adduce his evidence in the matter. Learned A.P.P. submitted that in such circumstances, the learned Special Court closed the evidence and ultimately, for want of evidence, has acquitted the accused.

4. Learned A.P.P. further submitted that opportunity must have been given by the learned Special Court to the prosecution for adducing the other evidence in the matter.

Learned A.P.P. further submitted that, there are serious allegations of corruption against the accused persons and prima facie evidence is placed on record by the prosecution. Learned A.P.P. submitted that the accused had initially sought their discharge by filing an application before the Special Court and the same was rejected by the said Court. Learned A.P.P. further submitted that though the accused challenged the said order before this Court, it was not interfered. Learned A.P.P. submitted that the aforesaid fact evinces that there is material against the accused so as to proceed with the trial. Learned A.P.P. submitted that in such circumstances, the order passed by the Special Court, closing the evidence, ultimately resulting in acquittal of the accused, needs to be set aside and the matter deserves to be decided on merits.

5. One of the accused is appearing in person, however, today he is not present before the Court. The other accused are represented by the respective learned Counsel. The learned Counsel were common in submitting that the learned Special Judge has passed a well reasoned speaking order and no interference is required in the order so passed. Learned Counsel submitted that ample latitude was given by the Special Court to the prosecution for leading necessary evidence.

Learned Counsel, taking me through the discussion made by the Court, submitted that at every stage, the Special Court has given due opportunity to the prosecution so as to proceed with the trial, however, when even after availing ample opportunities, the prosecution did not proceed with the matter, and in view of the fact that the High Court has made the matter time bound, and though time to dispose of the said Special case was once extended, and the said time was also getting over, the Special Court closed the evidence of the prosecution and ultimately, for want of evidence, acquitted the accused. Learned Counsel submitted that having regard to the peculiar facts of the present case, no interference is warranted in the order passed by the Special Court.

6. I have carefully considered the submissions made by the learned A.P.P. and the learned Counsel appearing for the accused. I have also perused the impugned order and the other material on record. The material on record reveals that in Criminal Writ Petition No.255/2014 and 612/2014, an order was passed by this Court on 15th of September, 2014, directing the Special Court to decide Special Case No.11/2013, within the period of four months. Pursuant to such direction by this Court, the learned Special Judge framed the charge against the

accused on 25th of November, 2014, and the case was fixed for evidence on 16th of January, 2015. On that day, the evidence of the sanctioning authority was recorded by the Special Court. The matter was then adjourned for further evidence on 6th of February, 2015. The two days programme was fixed by the Special Court i.e. on 6th and 7th of February, 2015, for recording evidence of the prosecution witnesses. On the said date, the matter could not be proceeded since it was informed by the complainant on whose instance the criminal prosecution was initiated against the accused that he would not be able to attend the Court because of his illness. Thereafter, the further two dates were fixed for recording the evidence i.e. 25th and 26th February, 2015. On 25th February, 2015, the Public Prosecutor as well as the complainant both sought adjournment. The adjournment was sought by the complainant on the ground that he had made an application to the State Government for appointment of the Special Prosecutor to conduct the said case and time of one month was, therefore, sought. The matter was, therefore, adjourned for further two dates i.e. on 19th and 20th of March, 2015. On 19th of March, 2015, the complainant again moved an application seeking adjournment stating that his application for appointment of Special Prosecutor is pending for consideration before the State

Government. The matter was, therefore, adjourned to 6th of April, 2015. While adjourning the matter to 6th April, 2015, it was clarified by the learned Special Judge that no further adjournment will be granted and if the evidence is not adduced on the said date, he will be constrained to close the evidence of the prosecution. On 6th of April, 2015, again the complainant moved an application for adjournment but the same was rejected by the Court. Thereafter, the learned A.P.P. submitted that he is willing to examine other witnesses and the matter was, therefore, adjourned to 5th of May, 2015. On 5th of May, 2015, the Advocate for the accused moved an application for examining the complainant first before examining other witnesses so that their defense is not disclosed to the complainant before he enters the witness box. The request so made by the accused was accepted by the Special Court and the matter was adjourned to 22th of May, 2015, for recording the evidence of the complainant. On the said date, the complainant again presented an application seeking adjournment for one month on the same ground that the appointment of the Special Public Prosecutor is in process. The learned Special Court, however, declined to accept the said request and closed the evidence of the prosecution by passing an order below Exh.1. The order so passed below Exh.1 as

well as the order passed below Exh.80 directing the prosecution to examine the complainant first were challenged by the State by filing Criminal Revision Application No.131/2015 before this Court. This Court vide order passed on 28th of September, 2015, set aside the order passed below Exh.1 whereby the prosecution evidence was closed by the Special Court but confirmed the order passed below Exh.80 whereby the Special Court has directed the prosecution to record the evidence of the complainant first. In the said Criminal Revision Application the time to decide the trial was extended by three months from the date of the said order. Thus, the mandate was given to the Special Court to decide Special Case No.11/2013 on or before 28th of December, 2015. Thereafter, the Special case was again taken up for hearing and the matter was adjourned to 23rd October, 2015, for recording the evidence. Till that date the witness summons was not served and the prosecution moved for issuing fresh witness summons to the complainant. The Special Court, considering the previous conduct of the complainant, issued bailable warrant against him and adjourned the matter for recording his evidence on 4th of November, 2015. On 4th November, 2015, the complainant appeared before the Court and moved an application seeking adjournment on the ground that he has filed transfer

application before the High Court. The matter was, therefore, adjourned to 24th November, 2015. On the said date again an adjournment was sought by the complainant. The matter was then adjourned to 10th of December, 2015. On 10th of December, 2015, complainant again sought an adjournment reviving the earlier ground that appointment of Special Public Prosecutor was not made till that date. In the aforesaid circumstances, the learned Special Judge on 10th of December, 2015, closed the evidence of the prosecution by making the following observations:

" As the prosecution was not willing to examine further witnesses by giving up the complainant and as the complainant was not willing to give evidence unless Special Public Prosecutor is appointed, this Court is compelled to close the evidence of the prosecution. "

The matter was then posted for recording the statements of the accused under Section 313 of Code of Criminal Procedure to 19th December, 2015. In view of the fact that no incriminating evidence has come on record against the accused, the statement under Section 313 of the Code was dispensed with and the matter was posted for judgment. On 12th January, 2016, the learned Special Judge passed an order thereby acquitting the accused since no incriminating evidence had come on record against any of

them.

7. The aforesaid events are elaborately discussed by the learned Special Judge chronologically in the impugned order. After having considered the facts as aforesaid, it does not appear to me that the learned Special Judge has committed any error in passing the impugned order. From the record it is evident that the Complainant had resorted to all possible modes so as to prolong the trial. From the facts as are discussed by the learned Special Judge in the impugned judgment, it is evident that ample latitude was given by the learned Judge to the prosecution to proceed with the Special case. However, inspite of these opportunities, when the case was not proceeded further, and no evidence was adduced to prove the guilt of the accused, the Special Judge did pass the impugned order. I reiterate that no case is made out by the State for granting it leave to appeal against the impugned judgment. Granting such an opportunity, according to me, would amount to abuse of process of law. I am, therefore, not inclined to allow the present application. Hence, the following order:

ORDER

1. Criminal Application No.4831/2016 is rejected.

2. In view of the order passed in Criminal Application No.4831/2016, Criminal Application No.4295/2017 and Criminal Appeal No.117/2016 do not survive and stand rejected.

(P.R. BORA, J.)

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