

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1610 OF 2017

The State of Maharashtra, through **Applicant**
appropriate Authority, Nanded
Waghala Municipal Council

V E R S U S

Dr. Quamar Sultana **Respondent**

Mr. S.Y. Mahajan, A.P.P. for the Applicant/State
Mr. V.S. Kadam, Advocate for the Respondent

CORAM : V.L. ACHLIYA, J.

DATE : 26TH JULY, 2017

ORDER :

1. The applicant-State has preferred this application seeking leave to file Appeal against the impugned Judgment and order of acquittal passed in Regular criminal Case No.572 of 2011 by the Chief Judicial Magistrate, Nanded.

2. Heard learned A.P.P. for the applicant-State and the learned counsel for the respondent. Perused the impugned Judgment and order passed by the lower Court.

3. Perusal of impugned Judgment and order reflects that on the basis of complaint filed by Asstt. Municipal Commissioner of Nanded Waghala Municipal Council under Section 28 of P.C.P.N.D.T. Act, the respondent was prosecuted for committing offence under Section 4 (3), 5, 6, 29, punishable under Section 23 of P.C.P.N.D.T. Act. It is alleged that during inspection of Sonography Center run by respondent, it was found that record as mandatorily required not maintained by respondent. Certain discrepancies found in between the reports submitted of actual cases in which Sonography conducted and form 'F' found during inspection. Certain discrepancies were also found in respect of filling complete information. So also certain record which is required to be preserved found to be not preserved.

4. On conclusion of trial, the learned Chief Judicial Magistrate acquitted the accused/respondent by observing that the complainant has failed to prove guilt against accused. It is also observed that prosecution has failed to prove that Asstt. Municipal

Commissioner who filed complaint was authorized to act as a "Appropriate Authority".

5. Learned A.P.P. has strenuously contended that the impugned Judgment and order is not sustainable in Law. He submits that the trial Court has not properly considered the evidence adduced by prosecution.

6. On the other hand, the learned counsel for respondent supported the Judgment and order passed by trial Court. It is pointed that the issue as to competence of Asstt. Municipal Commissioner to file complaint in the capacity as a "Appropriate Authority" was challenged by respondent by filing Writ Petition No.1659/2013, which was decided along with other petitions involving identical issue. The petitions were disposed of by order dated 13.03.2013. It is held that Asstt. Municipal Commissioner was not notified to act as "Appropriate Authority" nor authorized by Municipal Commissioner to act as an "Appropriate Authority". On the basis of such conclusion, the action taken against petitioner suspending

registration held to be without authority vested with Asstt. Municipal Commissioner. The action of Asstt. Municipal Commissioner held to be without authority and set aside. The order in the matter of petitioner and other similarly situated persons passed by Division Bench of this Court was challenged before Apex Court by filing S.L.P. (C) 18124 of 2013. By order dated 09.12.2013, the S.L.P. filed by Asstt. Municipal Commissioner, Nanded Waghala city came to be dismissed. It is pointed out that inspite of such order, no steps taken even to authorized Asstt. Municipal Commissioner to act as appropriate authority. It is therefore contended that appeal preferred is devoid of substance and merit therein.

7. In order to appreciate the submissions advanced, I have perused the impugned Judgment passed by the trial Court. In my view, there is absolutely no perversity in the Judgment and order passed by trial Court. In fact, the entire proceeding is vitiated for the reason that the complaint was filed by an Asstt. Municipal Commissioner who was neither

notified nor authorized by Commissioner to file complaint in the capacity as "Appropriate Authority". The decision in the Writ Petition filed by respondent not interfered by Apex Court. In this view, I am not inclined to grant leave to file appeal. Accordingly, the application is rejected.

(V.L. ACHLIYA, J.)

SRM/26/7/17