

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL APPLICATION NO. 2302 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
PRABHAVATI MACHHINDRA WARE AND ANR

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Advocate for Applicant : Mr. SP Tiwari, APP
Mr. Deshmukh Vivekanand B. For Respondent No.1
Adv A R Devkate For Resp. No 2.

CORAM : P.R.BORA, J.

DATE : 23rd November, 2017.

PER COURT :

1) Heard learned APP and learned Counsel appearing for the respective parties.

2) The State has preferred the present application, seeking leave to appeal in Special Case (AC) No.9/2014 decided on 8th January, 2016.

3) Respondent Nos. 1 and 2 were prosecuted in the aforesaid special case for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of The Prevention of Corruption Act, 1988. It was the allegation against the respondents

that they demanded the amount of bribe from the complainant - Moin Kazi for not to initiate an action under Section 107 of the Code of Criminal Procedure. The learned Special Judge, after having assessed the oral as well as documentary evidence on record, acquitted both the respondents-accused from the charges levelled against them.

4) Learned APP Shri Tiwari submitted that the Court has failed in appreciating the evidence on record and on some frivolous grounds, has recorded the finding of acquittal. The learned APP further submitted that the demand has been sufficiently proved by the evidence of the prosecution and the acceptance of bribe amount is also proved beyond any reasonable doubt. In such circumstances, according to learned APP, presumption was raised against both the respondents and that has not been rebutted by the respondents and in spite of that, the finding of acquittal has been recorded by the learned

Special Judge. The learned APP, therefore, prayed for allowing the present application so that the issues raised in exception to the impugned order, can be thoroughly agitated in the appeal.

5) Shri Deshmukh and Shri Devkate, learned Counsel appearing for the respective respondents, were common in submitting that the trial court has passed a well-reasoned order and since no cogent evidence was brought on record by the prosecution, rightly acquitted both the respondents from the offences charged against them. The learned Counsel further submitted that no case is made out for grant of leave to file an appeal against the impugned judgment.

6) After having considered the submissions advanced by the learned APP and learned Counsel appearing for the respondents and on perusal of the impugned judgment, apparently it does not appear to me that any error has been committed by

the learned Special Judge in acquitting the respondents. As has been observed by the learned Special Judge, the very purpose, for which the respondents were alleged to have demanded the amount, was not properly stated by the informant-complainant in his testimony before the Court. The learned Special Judge has further observed that the evidence as about the acceptance of the bribe amount is also not free from doubt since there is variance in the testimonies of the witnesses as to by which hand the amount was accepted and by which hand it was kept in the purse. The learned Special Judge has also observed that the prosecution has also not brought on record any evidence to show that at the relevant time both the respondents were on duty and were assigned with the work which the complainant was expecting to get done by these respondents. Further, when a specific defence was raised by the accused that at the relevant time they were not on duty and were not assigned the concerned duty, it was incumbent on the part

of the prosecution to bring necessary evidence on record. Since the very duty chart was not placed on record, the learned Judge has rightly held that the prosecution has failed in proving its case beyond reasonable doubt.

7) After having considered the discussion made by the trial court, it does not appear to me that any patent illegality or error is committed by the trial court. The reasons which are assigned by the trial Court are consistent and valid. It does not appear to me that in the facts, as are existing on record, any other conclusion could have been arrived at than the conclusion recorded by the learned Special Court. I am, therefore, not inclined to allow the present application. Hence, the following order.

ORDER

. The Criminal application seeking leave to file an appeal is rejected.

(P . R . BORA , J .)

bdv/