

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CRI.APPLN.NO.2617 of 2016

5 CRIMINAL APPLICATION NO. 2617 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
KISHOR GOVINDRAO DESHMUKH

...
APP for Applicant : Mr. S.R.Yadav Lonikar
Mr. P R Nangare, Advocate for respondent sole.

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CORAM : P.R. BORA, J.
Dated: August 22, 2017

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PER COURT :-

1. Heard learned A.P.P. and the learned counsel appearing for the respondent i.e. the original accused.
2. The respondent was prosecuted for the offenses punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. Learned Special Court has acquitted the respondent from all the offenses charged against him.
3. The allegation against the respondent was that for issuance of no objection certificate, he had demanded bribe of Rs.10,000/- and, accordingly, the same was accepted by him and he was caught in a trap laid in that regard.
4. Learned A.G.P. Inviting my attention to the discussion made by the learned Special Court, submitted that the Special

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Court has, on some superficial grounds, given benefit of doubt to the accused, and has failed in appreciating that the complainant as well as the Panch witnesses have sufficiently corroborated the evidence of each other and demand as well as acceptance was proved through the case of the prosecution. Learned A.G.P., therefore, prayed for allowing the present application, and to hear the appeal on merits.

5. Learned counsel appearing for the respondent / original accused has opposed for allowing the application. Learned Counsel submitted that a clean acquittal is recorded by the learned Special Court observing that neither demand nor acceptance was proved. Learned Counsel submitted that in absence of any such material, there seems no propriety in allowing the State to file appeal. He, therefore, prayed for rejecting the application.

6. I have considered the submissions advanced by the learned A.P.P. and the learned Counsel appearing for the respondent i.e. the original accused. I have perused the impugned judgment. It appears that the complainant as well as the Panch witnesses have duly supported the case of the prosecution. Learned A.P.P. brought to my notice the fact that in the statement immediately given by the accused after the trap, no such defense was raised by the accused that the amount which was recovered from him was accepted by him towards Dhvaj

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Nidhi. Learned A.P.P. submitted that subsequently, the said defense has been raised.

7. Considering the facts as aforesaid, and having regard to the fact that no such defense was immediately raised by the respondent, reasonable doubts are raised whether the defense as was raised by the accused during the course of trial was afterthought or otherwise. Even otherwise, it appears to me that the evidence needs to be re-scrutinized by this Court. Arguable points are raised in exception to the impugned judgment. I am, therefore, inclined to allow the present application. Hence, the following order:

ORDER

1. The application is allowed and disposed of.
2. Criminal Appeal be registered in accordance with law.
3. Call for R & P.
4. On registration of the appeal, issue notice to the respondent in the appeal. Learned Counsel Shri Nangare waives service for respondent / original accused. Service complete. List the appeal for admission after four weeks.

(P.R. BORA, J.)

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