

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.38 OF 2017

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

PRASHANT MOTILAL MISTRI)...RESPONDENT

Mr.S.V.Gavand, APP for the Applicant - State.

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2017.

P.C. :

1 This is an application by the State seeking leave to challenge the judgment and order dated 6th January 2017 passed by the learned Special Judge, Pune, in Special Case No.47 of 2014, thereby acquitting the respondent / accused of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned APP appearing for the applicant / State. By drawing my attention to paragraph 21 of the impugned judgment and order of acquittal, the learned APP argued that the learned trial Judge has not even appreciated evidence of panch witness – PW2 Gavand and Investigating Officer – PW3 Kalaskar. My attention is further drawn to the sweeping observation recorded at the end of paragraph 24 by the learned trial court to the effect that authorities cited on behalf of the prosecution did not help the prosecution as they turned on different points than facts of the prosecution case, per contra, authorities cited on behalf of the accused are squarely applicable to the present case. The learned APP submitted that this sweeping observation is made without even considering the ratio of the judgment cited by the prosecutor before the trial court.

3 According to the prosecution case, the respondent / Food Supply Inspector was entrusted with the work of conducting inquiry of complaint against Ration Shop holder namely Ramesh Dongare. During that inquiry, on 26th August 2014 and 27th

August 2014, respondent / public servant is stated to have demanded illegal gratification amounting to Rs.50,000/- and after negotiation the amount was fixed at Rs.40,000/-. Then on 28th August 2014, there was demand and acceptance of illegal gratification to the tune of Rs.40,000/- by the respondent / Food Supply Inspector. PW2 Gavand is stated to be the shadow panch. Perusal of the impugned judgment and order of acquittal does not show that the learned trial court has appreciated evidence of this shadow panch, so also that of the Investigating Officer Kalaskar. By disbelieving the evidence of complainant i.e. PW1 Ramesh Dongare, acquittal came to be recorded. It is the case of prosecution that tainted currency notes amounting to Rs.40,000/- came to be recovered from left side pant pocket of the respondent / accused in presence of panch witness and the Investigating Officer. There is no proper consideration to this aspect of the matter.

4 In this view of the matter, case for grant of leave is made out. Hence the order :

- i) Leave granted.
- ii) Admit.
- iii) Application for leave to appeal be considered as
Memo of Appeal.
- iv) Issue notice to respondent / accused.
- v) Call for Record and Proceedings.
- vi) In the meanwhile, action under Section 390 of
the Cr.PC. before the trial court.

(A. M. BADAR, J.)