

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.113 OF 2015**

The State of Maharashtra)...Applicant

V/s.

Ganpati Ramchandra Kumbhar)...Respondent

Ms. A.A.Takalkar, APP for the Applicant-State.

Mr. Tejas Hilage, Advocate for R.No.1.

CORAM : A. M. BADAR, J.

DATE : 11th JANUARY 2017.

P.C. :

This is an application for grant of leave to appeal filed by the State seeking to challenge the judgment and order dated 8.7.2015 passed by the learned Special Judge, Kolhapur thereby acquitting the Respondent-Accused for the offence punishable under Section 7, 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard learned APP appearing for the Applicant/State. She argued that demand and acceptance is proved by the prosecution through evidence of the complainant, shadow panch

and Investigating Officer and, therefore, the learned Special Judge erred in acquitting the respondent/accused.

3 The learned counsel for the respondent-accused argued that neither demand nor acceptance was proved. Evidence on record shows that table of the respondent is accessible to all and sundry. Panch witness had refreshed his memory and, therefore, his evidence was not considered, rightly by the trial Court. Learned Advocate appearing for the respondent-accused further argued that complainant is accomplice as he himself volunteers to pay bribe. Investigating Officer has not stuck up to the prosecution case and lastly, work of the complainant was not pending with the respondent-accused.

4 I have perused the impugned judgment as well as evidence adduced by the prosecution. P.W.3 Mukund Mali in the opening paragraph of his deposition has stated that he has shown his willingness to pay Rs.100/- to the respondent-accused but the respondent-accused demanded Rs.500/-. His evidence further shows that when he met respondent-accused, respondent-accused asked whether money part is being complied or not. Then the

complainant explained how money was paid. P.W.1 Chavan is shadow panch. Incident took place in the year 2004 and he entered into witness box in the year 2015. This witness is from the clerical cadre. In this backdrop, his evidence to the effect that he refreshed his memory will have to be considered.

5 Evidence of the accomplice is to be considered cautiously. Some discount is required to be given to the fact that the witness had entered into witness box after 11 years. In the backdrop of these facts, evidence of the investigating officer goes to show that Anthracene powder was found on the hands of the respondent-accused. This prima-facie indicates handling of tainted currency notes by the respondent-accused. One will also have to take into consideration post trap panchanama recording the contemporaneousness events and in the light of fact that one will have to examine evidence of shadow witness so far as it relates to the refreshing of his memory. If contemporaneous record is in tune with his deposition then one will have to examine whether his deposition is consistent with the prosecution case or not. Work already done is not criteria in such cases and the same cannot by

itself amounts to defence of the public servant. Sanction and its legality will have to be re-examined because ultimately it will have to be examined whether prejudice is caused to the applicant or not for want of sanction.

6 In this view of the matter, prima-facie case is made out by the State. Therefore, leave granted. Application for grant of leave shall be considered as memo of appeal.

7 Admit.

8 Issue notice to the Respondent. Call for Records and proceedings. Hearing of the appeal is expedited considering the age of the accused.

(A. M. BADAR, J.)