

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application No.563 of 2016 & Criminal Appeal No. _____ of 2016
 (State .vs. Bhanu @ Bhaskar @ Bhimrao s/o. Mangal Bhowte and Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.R.S.Nayak, Advocate for the Appellant/Applicant.
 Mr.S.P.Gadling, Advocate for the Respondents/Accused.

**CORAM : B.R.GAVAI AND
 KUM. INDIRA JAIN, JJ.**

DATE : 14.3.2017.

Heard.

The State has filed Criminal Application No.563 of 2016 seeking leave to file appeal. The State by way of present Criminal Appeal has challenged the Judgment and Order passed by the learned Sessions Judge, Gondia in Sessions Trial No. 14 of 2012 thereby acquitting the respondents/accused herein of the offences punishable under Sections 120-B, 109, 114, 465, 468, 471 r/w. Section 120-B of the Indian Penal Code and under Sections 20, 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as '***the UPA Act***').

It is the prosecution case that, on 26.12.2010, when the Officials of Police Station, Duggipar were on patrolling duty,

they came across with one Maruti Omni Van wherein accused nos. 1 to 5 were found carrying chits with suspicious writings. It is the prosecution case that, during investigation, various raids were carried out by the Investigating agency and huge material showing involvement of the said accused in the naxalite movement were seized. It is further the prosecution case that, during investigation, involvement of accused nos. 6 to 9 in the crime was also revealed.

The learned trial Judge, after considering the material on record, found that the prosecution has failed to prove the case on merits and therefore, the accused were entitled to be acquitted.

Perusal of the Judgment of the learned trial Judge would reveal that, for conviction under the provisions of UPA Act, there has to be a sanction for prosecution accorded by the competent Government. The learned trial Judge held that perusal of the Sanction Order dt.21.6.2011 would reveal that the Sanctioning Authority i.e. the State Government itself was ignorant about the amendments carried out to the said Act in the year 2008.

It was further found that the Sanction Order did not disclose that the papers were ever referred to the Director of prosecution, Maharashtra State (DoP) at any

point of time or that the Director of prosecution had made an independent review of the evidence gathered during the course of investigation and had submitted a report making recommendation for prosecution within the time limit prescribed by the statutory provisions.

The learned trial Judge further found that perusal of the Sanction Order itself did not reveal that the Sanctioning Authority was aware about any material which would constitute an offence punishable under the UPA Act.

In that view of the matter, the learned trial Judge found that the prosecution had failed to prove the case on merits as well as the prosecution had failed to comply with the mandatory requirements as are provided.

Interference in the appeal against acquittal would be warranted only when the findings of the learned trial Judge are found to be perverse. No perversity is noticed in the impugned order and hence, no interference with the findings of the learned trial Judge is warranted. Criminal Application No.563 of 2016 as well as the Criminal Appeal are, therefore, dismissed.

No order as to costs.

JUDGE

JUDGE

jaiswal