

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION [APPA] NO.917 OF 2017

(*The State of Maharashtra, through Dy. Superintendent, A.C.B., Wardha*
vs.
Sandip s/o Pandurang Hanmante)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

Shri R.S. Nayak, A.P.P. for the Applicant/State.
Shri M.B. Naidu, Advocate for the Non-Applicant.

CORAM : KUM. INDIRA JAIN, J.
DATE : 13th NOVEMBER, 2017.

By this application, State of Maharashtra is seeking leave to appeal against the judgment and order dated 16/12/2016 passed by the learned Sessions Judge, Wardha in Special (ACB) Case No.2/2011 thereby convicting accused of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

Heard Shri R.S. Nayak, learned A.P.P. for applicant-State and Shri M.B. Naidu, learned Counsel for non-applicant. Perused judgment and order in question.

It is the case of prosecution that accused was working as Talathi at Wani. Complainant

moved an application for mutation of the land purchased by the family members. According to the complainant, accused demanded Rs.4,000/- towards illegal gratification for effecting mutation. On deliberations, accused agreed to accept an amount of Rs.1,000/-. As complainant was not desirous of paying bribe, he reported the matter to Anti Corruption Bureau, Wardha on 01/09/2003. A trap was arranged and it was successful. The sanctioning authority initially refused to accord sanction. After persuasion, sanction was accorded in the year 2011. Thereafter, charge-sheet came to be filed.

With the assistance of the learned Counsel for the parties, this Court has gone through the evidence of the sanctioning authority and other witnesses. It can be seen from the facts elicited in the cross-examination of the sanctioning authority that initially in the year 2004, sanction to prosecute the accused was refused by the sanctioning authority. PW-5 Jayshree Bhoj was the Collector of the District Wardha and the sanctioning authority at the relevant time. She admitted in the evidence

that after refusal of sanction in 2004, State Government referred the matter for sanction and in September, 2008 decided to take action against the accused. There was correspondence between Collector, Wardha and S.D.O., Hinganghat for the same. It appears from the evidence of sanctioning authority that the correspondence and the documents between S.D.O. and the Government were not produced along with the charge-sheet. It is apparent from the sanction order [Exh.70] proved by the sanctioning authority that even typographical mistakes committed in the draft sanction order were not corrected and sanctioning authority signed the order. This indicates clear non-application of mind at the end of sanctioning authority. In this background, trial Court came to the conclusion that sanction order was issued without application of mind and suppressing the material facts. No fault can be attributed to the findings recorded by the trial Court. So far as the merits are concerned, complainant was not made available for cross-examination. Several irregularities were noticed in the procedure

followed for the trial.

Considering the drawbacks in the procedure and not making the complainant available for cross-examination, trial Court came to the conclusion that offences have not been established beyond reasonable doubt. This Court does not find any error in the reasonings recorded by the trial Court. Prosecution has no case on merits. Hence leave refused. Criminal application stands rejected.

**sdw*

JUDGE