

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.932 OF 2002**

State of Maharashtra

... Appellant

Vs

1 Sadashiv Vishnu Nikam

Age: Adult, Occ: Service,

R/a Range Hill Road, Pune

address of R.No.1 P.S.Inspector,

At Post Ghodegaon, Taluka: Ambegaon,

Dist. Pune 412 408.

2 Trimbak Dattatray Kulkarni

Age: Adult, Occ: Service,

R/a 795-Kasaba Peth, Pune

... Respondents

...

Smt. J.S.Lohokare, the learned Additional Public Prosecutor for the Appellant-State.

Mr. Vijay Killedar for the Respondent Nos.1 and 2.

CORAM : SANDEEP K. SHINDE J.

DATE : 29TH OCTOBER, 2018

ORAL JUDGMENT :

This Appeal under Section 27 of the Prevention of Corruption Act, 1988 read with Section 378(1) of the Code of Criminal Procedure, 1973 is preferred by the State against the order of acquittal dated 24.5.2002 passed in Special Case No.15 of 1997 by the learned Special Judge, Pune.

2 Heard the learned the learned Additional Public Prosecutor for the State and the learned counsel for the Respondents/Accused.

3 Complainant Mr. Hole reported to the Anti Corruption Bureau that accused no.1-Assistant Police Inspector who was then attached to Ganesh Peth Police Chowky at Pune demanded three thousand rupees for not adopting the proceedings against him under Section 110 of the Cr.P.C. On such report, Crime No.3 of 1996 was registered under Sections, 7,12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (In short '**PC Act**'). Accused no.2 is a private individual who had allegedly accepted tainted money for and on behalf of Accused No.1. The learned trial Judge acquitted the accused on the following two grounds, namely,

- (1) Sanction allegedly accorded by P.W.3-Pinka Sharma, Assistant Commissioner of Police stood vitiated for want of application of mind;
- (2) Complainant Mr. Hole did not support the case in-as-much as he was declared unfriendly to the prosecution.

4 I have gone through the evidence with the assistance of the learned Additional Public Prosecutor and the learned counsel for the Respondents.

5 Mr. Sharma, Sanctioning authority would depose, that he accorded the sanction on the basis of note prepared by the Assistant Commissioner of Police and Prosecutor attached to his office. He had referred to documents in sealed envelope; however did not spell out which documents it were ? Nothing prevented him to say that he had gone through the final report. His cross-examination would disclose that he did not bring the case-papers with him in the Court except the notings prepared by the ACP and prosecutor. That even otherwise in his examination-in-chief, he did not depose that he had gone through the investigation record. On this premise, the learned trial Judge concluded that Sanctioning Authority had merely relied on notings of the ACP and of the public prosecutor attached to the said office. This view of the learned Judge

is a possible view and this Court while sitting in the appeal is not expected to substitute its own view unless such view is perverse or contrary to the evidence on record.

5 I have also gone through the evidence of complainant who has not supported the prosecution.

6 The learned Additional Public Prosecutor for the State has taken me through the evidence of pancha witness-Vasant Ghongade (P.W.2). No doubt, this witness has given clear account as to how money was demanded and accepted from the complainant. However, the fact remains that a person from whom money was demanded and the person who had paid it has not supported the prosecution and, therefore, evidence of this pancha witness cannot be taken into consideration to hold that prosecution has proved the charge against the accused.

7 That even otherwise, evidence has disclosed that tainted money was paid to the accused no.2 on the instructions of accused no.1 and his senior Mr. Chavan. Further, it is a matter of record that Mr. Chavan has not been impleaded as accused.

8 Thus, taking into consideration facts of the case and the evidence on record, I do not see that order impugned suffers any impropriety or infirmity or perversity.

9 In the result, Appeal stands dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J.)