IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 28 OF 2016

Central Bureau of Investigation ....Applicant.

Vs.

Samar Roy Chowdhary & Ors. ....Respondents.

Mr. H.S. Venegavkar for the Applicant.
Mr. Nitin Pradhan i/by Ms. Suman Prasad for the Respondent Nos. 1 and 2.
Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 24th APRIL, 2018.

P.C.:-

This is an Application under Section 378(3) of Cr.P.C. for leave to file Appeal against the Judgment and Order dated 31st August, 2013 passed by the learned Special Judge, (CBI Cases), Pune in Special (CBI-ACB) Case No. 11 of 2011, thereby acquitting the Respondent No. 1 from the offence punishable under Section 13 (1) (e) r/w Section 13(2) of the Prevention of Corruption Act, 1988. By the said Judgment and Order, the Trial Court has also acquitted the Respondent No.2 from the offence punishable under Section 109 of the Indian Penal Code.

2 Heard Mr. Venegavkar, the learned counsel for the CBI, Mr. Pradhan, the learned counsel for the Respondent Nos. 1 and 2 and the learned APP for the State. Perused the record.

3 The Respondent No.1, being a public servant, was charged with an offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, on the allegation that the Respondent No.1 had acquired disproportionate assets, than his known sources of income. The Respondent No.2 was charged for abetment in committing the said crime by Respondent No.1.

4 The point of controversy in the present case is a Bungalow situated at Baner, City of Pune. The evidence of Mr. T. Yuvaraj, (PW No.2) who is expert in the field, clearly reveals that the CBI has over estimated the value of the said Bungalow while taking into consideration its cost. That, the said value has been inflated to the tune of Rs.19,60,744/- and after deducting the said amount, the assets of the Respondent No.1 would come within the permissible limits as per the law. The evidence of PW No.2, belies the case of the prosecution to the extent of the inflated price estimated by them, at the time of submitting of the charge sheet.

5 The record further indicates that the Respondent No.2 is

an entrepreneur and an independent Income Tax Payer. The prosecution has clearly failed to prove the fact that, the Respondent No.2 has in fact abeted the alleged crime committed by Respondent No.1.

6 After perusing the entire record, this Court is of the considered opinion that, the prosecution has miserably failed to prove the fact that the Respondent No.1 was in fact having disproportionate assets than to his known source of income as alleged by it.

7 In view thereof and after taking into consideration the evidence available on record, this Court is of the opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case for grant of leave to file Appeal is made out.

8 Application is accordingly rejected.

(A.S. GADKARI, J.)