

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 53 OF 2017

State of Maharashtra

Vs.

Priyanka Prakash Kesarkar

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. V.V.Gangurde, APP for the Respondent-State.

Mr. Rajiv Patil, Sr. Advocate with Mr. B.G.Tangsali i/by
S.S.Gawade for Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 26th April, 2018

P.C.

1. This is an application under section 378(3) of the Cr.P.C. for leave to file appeal against the Judgment and Order dated 26.10.2016 passed by the learned Special Judge (A.C.), Palghar in Special Case No.2 of 2013 thereby acquitting the respondent for the offence punishable under Section 7 of the Prevention of Corruption Act.

2. Heard the learned APP for the State and the learned Senior Counsel Mr. Patil for the respondent. Perused the record.

3. The evidence on record clearly indicates that the prosecution has failed to prove the alleged demand by the respondent from the first informant Amrutlal Goyal. The

evidence further indicates that the alleged conversation of demand by the respondent from the first informant Amrutlal Goyal was recorded on a digital gadget/voice recorder. A compact disc of its transcription was produced before the Trial Court which was marked as 'Article A'. The evidence on record discloses that no Certificate as contemplated under Section 65(B) of the Evidence Act was produced on record. As the prosecution has failed to produce on record the said mandatory certificate, the trial Court has kept aside the said piece of evidence i.e. the compact disc from consideration, which according to me has been rightly done by the Trial Court. A safe reliance can be placed on the decision of the Supreme Court in the case of

4.

5. *Anvar P. V. vs. P.K. Basheer and ors. reported in AIR 2015 SC 180* in that behalf.

6. It is the settled position of law that demand is sine qua non in the case of bribery. As the prosecution has failed to prove the basic necessity under the law i.e. “demand” at the instance of the respondent for the alleged gratification, the Trial Court has acquitted the respondent from the charge framed against her.

7. After perusing the entire material 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 is made out.

8. Application is accordingly rejected.

(A.S.GADKARI, J.)