

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.137 OF 2016
IN
CRIMINAL APPEAL NO. OF 2016**

The State of Maharashtra

.. Applicant

Vs.

Ramesh Sitaram Nikam & Anr.

.. Respondents

.....
Mr.Swapnil S. Pednekar, APP for the Applicant.

Mr.Milind Deshmukh, Advocate for Respondent No.1.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 6, 2018.

P.C. :

This is an application seeking leave to file an Appeal against the judgment and order of acquittal passed by the Court of Additional Sessions Judge, Baramati in Special Case (ACB) No.61 of 2014. Respondents were tried for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The trial Court vide judgment and order dated 24th October, 2016, acquitted both the accused.

2 The case of the prosecution is that accused no.1 is a police head constable attached to Bhavaninagar Outpost, Taluka

Indapur at the relevant time and accused no.2 is a private person through whom allegedly accused no.1 had accepted bribe from the complainant.

3 Prosecution examined six witnesses in support of the case. Learned APP submitted that there is sufficient evidence to convict the accused and the trial court had committed an error in passing the impugned judgment of acquittal. It is submitted that prosecution has established the demand made by accused no.1 which was implemented by depositing the money with accused no.2. The evidence of the witnesses establishes the prosecution case.

4 It is submitted that the trial Court has not appreciated the evidence in proper perspectives while acquitting the accused. Evidence of the witnesses would indicate that the son of the complainant was at the police station which supports the prosecution case that the gratification was demanded to exonerate son of the complainant. It is submitted in the evidence of the panchas and the investigating officer as well as independent person corroborates the prosecution case, and, therefore, the trial Court has erroneously acquitted the accused.

5 Learned counsel for the respondents on the contrary submitted that the prosecution has failed to establish its case and, the trial Court has passed a well reasoned order which does not require interference. The demand is not proved. It is submitted that the demand is not established and respondent no.1 had not accepted the amount. The money was allegedly kept on the table of respondent no.2. There is no corroborating evidence to establish the demand as the conversations recorded by the investigating machinery were not part of the charge-sheet.

6 I have perused the evidence. As far as respondent no.2 is concerned, the complainant himself has stated that he was not concerned with the demand of bribe amount. There is no evidence to establish the fact that respondent no.2 has aided and abetted accused no.1 in commission of crime. From the evidence of P.W.1-original complainant, it appears that he has categorically stated that accused no.2 never demanded the bribe amount from him and, he had no complaint against him and, there is no verification about the demand of accused no.2. He also deposed that accused no.2 was never present when there was talk between him and accused no.1 and that he had no personal knowledge about the alleged demand.

7 Considering the nature of the evidence against accused no.2 Hemant Thorat, I find that the prosecution has not made out any case for grant of leave to file an Appeal against the order of acquittal. However, considering the nature of evidence against accused no.1, arguable questions are raised for grant of leave to file an Appeal against order of acquittal *qua* accused no.1 Ramesh Sitaram Nikam.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Leave is granted to file an Appeal against the order of acquittal passed by the Court of Additional Sessions Judge, Baramati in Special Case (ACB) No.61 of 2014 vide judgment and order dated 24th October, 2016, against respondent No.1-accused no.1 Ramesh Sitaram Nikam;

- (ii) Leave to file an Appeal against order of acquittal *qua* respondent No.2-accused no.2 Hemant Shivaji Thorat, is rejected;

- (iii) Call for record and proceedings;
- (iv) Hearing is expedited;
- (v) Liberty is granted to respondent no.1 to prefer an application for fixing early of the Appeal.

(PRAKASH D. NAIK, J.)