

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 51 OF 2018**

The State of Maharashtra.

..Applicant.

V/s.

Nagsen Ramchandra Dodake.

..Respondent.

Mr. S.S. Pednekar, APP for State.

Mr. Mahesh Yadav I/b. Mr. Sharad S. Mulik, advocate for respondent No. 1.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 10, 2019.

P. C. :

1 Heard learned APP for the State and the learned Counsel for the respondent.

2 This is an application seeking leave to appeal challenging the Judgment and Order dated 27/2/2018 passed by Special Judge(Prevention of Corruption Act), Court No. 45, Gr. Mumbai, in ACB Special Case No. 63 of 2015 thereby acquitting the respondent for the offence punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

3 Perused the records. It is the case of the prosecution that the respondent herein was working as typist in the office of Co-operative,

Talwalkar

Marketing and Cotton Industries division, which was located in New India Assurance building, Mumbai. That the complainant Sadanand Deshmukh happens to be a police personnel. It is the case of the complainant that in 1999 he had made an application to the government for granting house loan. The amount of about Rs. 1,15,020/- was sanctioned to him. He was to make repayment in 162 monthly installments. He had been to the office of Commissioner of police for getting no objection certificate. The letter was to be handed over to the Cooperative and Textile Department. The procedure for granting NOC was moving at snails pace and therefore, he had met one Mr. Nagsen Ramchandra Dodake i.e. present respondent, who was divisional clerk at Ahmednagar Division for granting NOC. He had demanded a gratification of Rs. 5000/-. Since the complainant was also public servant, was not willing to pay the said amount and therefore, he had approached the anti corruption bureau.

4 On the basis of his report, it was decided to lay trap. After conducting pre-trap panchanama panchanama and all other formalities on 30/10/2014 he was given instructions and was sent alongwith a shadow witness to fulfill the demand of the respondent.

5 The shadow witness has deposed before the Court that when

he met the respondent alongwith the complainant. He had heard them extending salutation and thereafter, the respondent had directed the complainant to fill a challan in the RBI and given a copy of the receipt to him. Thereafter, the complainant had moved far from the shadow witness. The shadow witness i.e. P.W.2 could not hear the conversation between the complainant and the respondent herein. He has categorically admitted that he could not hear the conversation between them. According to him, he had only heard them negotiating over the said amount. Thereafter, the complainant had been to R.B.I to deposit the challan and had returned alongwith receipt.

6 It is the case of the prosecution that conversation between the complainant and the respondent was recorded. That conversation was recorded in voice recorder. The prosecution has examined a voice analyst as P.W.4. She has deposed before the Court that value of the micro S.D. Card was not taken. No voice sample of any known person apart from the accused was obtained for voice analyst. It is therefore, the case of the defence that sources of voices were not considered.

7 Apart from that it is pertinent to note that the records would indicate that the time when the panchanama was conducted and the time when the complainant was depositing the challan in RBI coincide to

such an extent that at the same time that he was found at both the places.

8 The trap amount was found in the drawer of the office table of the respondent. No traces of anthracine powder were found on the hands of the accused/respondent. Hence belying the fact of acceptance of the trap amount. The manner in which the trap was conducted and the steps taken by the prosecution would clearly indicate that the prosecution has failed to prove demand and acceptance by the respondent. Hence, Learned Special Judge has rightly acquitted the respondent of all the charges levelled against him. The reasons assigned by the learned Judge are justifiable and call for no interference. Hence, application seeking leave to appeal stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]