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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION 297 OF 2019

Gulam Shabbir Abdul Momin & Anr. **...Applicants.**

Versus

The State of Maharashtra & Anr. **...Respondents**

Mr. S.V. Marwadi for the Applicants.
Ms. J.S. Lohokare, APP for the State.

CORAM : A.S. GADKARI, J.
DATE : 17th July 2019.

P.C. :-

1] By the present Revision under Section 397 of the Code of Criminal Procedure (for short "Cr. P.C."), the applicants have questioned, correctness and legality of the Order dated 4th May 2019 passed below Exh.87 in Special Case No.17 of 2006 by the learned Special Judge, Daman

2] Heard Mr. Marwadi the learned counsel for the applicants and the learned APP for the State. Perused the record annexed to the Application.

3] The applicants are accused in Crime bearing No.R.C.19(A) of

1994 investigated by the respondent No.2, under Sections 420, 120(B) of the Indian Penal Code and under section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "P.C. Act"), now culminated into Special Case No.17 of 2006 pending on the file of the learned Special Judge, Daman for trial.

4] The allegations against the applicant No.1 is that, the applicant No.1 was the Municipal Councillor of Daman Municipal Council for a period from 1985-1992. That the applicant No.1 in conspiracy with other public servants abused his official position and entered into criminal conspiracy with the applicant No.2 who is his wife. That the applicant No.1 favoured his wife i.e. applicant No.2 in allotment of a passenger shed by misusing his official position and committed the aforestated crime. It is further alleged that, the applicant No.1 faoured his wife and allotment was made by a decision of the Council causing wrongful loss to it. After completing investigation, the respondent No.2 has submitted chargesheet against the applicants.

5] The record indicates that, the applicants thereafter preferred an application under Section 227 of Cr. P.C. for discharge from the crime, however, the said application was rejected by the learned Special Judge,

Daman by its Order dated 22nd June 2016.

The applicants therefore preferred Criminal Revision Application No.434 of 2016 which has been rejected by this Court by its Order dated 3rd August 2017. The applicants thereafter filed an application below Exh.92 for their discharge from the offence punishable under the provisions of P.C. Act, in view of the Prevention of Corruption (Amended) Act 2018 which has also been rejected by the learned Special Judge at Daman by its Order dated 4th January 2019. It is to be noted here that, the said Order holds the field as of today.

6] The record further discloses that, the applicants thereafter filed the present application below Exh.87 contending that, in view of Section 91 of the Goa, Daman and Diu Municipalities Act, 1968, at the most Section 168 of the Indian Penal Code can be applied to the present crime, however, the provisions of P.C. Act cannot be attracted. The respondent No.2 opposed the said application and filed its say below Exh.112. It is the specific case of the prosecution that, apart from the provisions of the Indian Penal Code, the provisions of the P.C. Act are also applicable to the present crime, as the applicant No.1 while holding an office as a public servant has alleged to have committed the present

crime.

7] By now it is well settled position of law that, the provisions of P.C. Act are in addition to and not in derogation with the provisions of the Indian Penal Code. After perusing the entire record, it appears that, there is no substance in the contention of the learned counsel for the applicants for dropping charges under the provisions of P.C. Act. The record discloses that, there is sufficient material collected by the prosecuting agency against the applicants to frame charge for the offences alleged. This Court is of the view that, the learned Special Judge, Daman has rightly rejected the application below Exh.87 in Special Case No.17 of 2006 by the impugned Order. It further appears that, with a view to protract and/or procrastinate the trial, the applicants had filed the aforestated application. As noted earlier, there is sufficient material available on record to frame charge against the applicants for the offences alleged against them.

7] Revision being devoid of merits, is accordingly rejected.

(A.S.GADKARI, J.)