

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

**CRIMINAL APPLICATION NO.84 OF 2018
(For Leave to Appeal)**

The State of Maharashtra

.... Applicant
(Ori. Complainant)

Vs.

1. Mithun Balaso Sawant
2. Prakash Kale Gauda

.... Respondents
(Ori. Accused)

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

Mr. Mahesh Yadav I/by Mr. Sharad S. Mulik for Respondent nos. 1 and 2.

**Coram : Smt. Sadhana S. Jadhav, J.
Date : 11th April 2019**

P.C. :

1 Heard the learned APP for the applicant and the learned counsel for the respondents.

2 Upon perusing the notes of evidence, it is clear that the prosecution had established the demand by respondent no.1 and respondent no.1 herein had directed the complainant to deposit the gratification amount with a Tea Stall owner. The said amount was

found with Tea Stall owner and it is the defence of Tea Stall owner that he had accepted it on behalf of respondent no.1 herein. The demand was recorded in the Voice Recorder and the transcript of the said conversation would establish a demand made by the respondent no.1 to the complainant and hence a case under Sections 7 and 13 of the Prevention of Corruption Act, 1988 had been proved.

3 There is evidence to show that accused no.2 had accepted the tainted currency notes of Rs.5,000/- from the complainant. The traces of anthracene power were found. There are minor discrepancies in the evidence of the complainant, PW-2, which are not fatal to the prosecution. The complainant had stated that the amount was received by the right hand, whereas the traces were found on the left hand and therefore the learned Court had disbelieved the case of the prosecution. PW-4 and PW-5 were the eye witnesses to the alleged demand by accused no.1, they have not supported the prosecution and therefore the Court has acquitted the accused who happens to be a public servant. The learned Court has ignored the recorded conversation and has therefore acquitted the

respondents herein. In view of above discussion, the application seeking leave to appeal deserves to be allowed.

4 Appeal admit.

5 Action under Section 390 of Code of Criminal Procedure be taken against the respondents.

6 The respondents shall appear before the Special Judge, Greater Mumbai on/or before 11th June 2019 and furnish bail bonds to the tune of Rs.25,000/- and one or more solvent sureties in the like amount.

7 The respondents shall continue to mark their presence before the learned Special Judge on the date assigned by the learned Special Judge once in six months on the date assigned by the Special Judge.

8 Upon failure to attend any two consecutive dates, the Special Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(Smt. Sadhana S. Jadhav, J)