

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1376 OF 2019

Shyamsunder R. Agrawal ... **Applicant**

Versus

The State of Maharashtra ... **Respondent**

.....

Mr.Sandesh D. Patil i/b. Mr.Prithviraj S. Gole, Advocate for the Applicant.

Mr.S.V.Gavand, the Additional Public Prosecutor for the Respondent No.1/State.

Mr.Kushal Mor, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 29th JANUARY 2020.

ORAL JUDGMENT :

1 Heard the learned Counsel appearing for the applicant as well as the learned Additional Public Prosecutor appearing for the State.

2 Rule.

3 Rule is made returnable forthwith. Heard finally by consent of the parties.

4 By this application, the applicant, who happens to be accused No.1, is praying for directing the learned Special Judge, Thane to decide his application below Exhibit 55 in Special Case No.11 of 2017 expeditiously and before deciding any other applications which are moved in the same Special Case.

5 The applicant herein is accused No.1 in the subject Special Case No.11 of 2017 pending on the learned Special Judge, Thane. He along with co-accused is charge-sheeted for the offences punishable under Section 420, 467, 468, 470 and 471 and 120B of the Indian Penal Code as well as under Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

6 It is not in dispute that the only public servant, who was sought to be arraigned as an accused in the Special Case was Bhaskarrao Y. Wankhede. The charge-sheet itself shows that Bhaskarrao Y. Wankhede, the then Additional Collector and the Competent Authority passed away and was not alive at the time of filing of the charge-sheet. It is reported that except him no other servant is arraigned as an accused in the Special Case bearing No.11 of 2017 arising out of the charge-sheet No.20 of 2017.

7 The application at Exhibit 55 moved by the petitioner before the learned Special Judge is for transferring the subject Special Case No.11 of 2017 to the file of the learned Judicial Magistrate First Class, Thane. Contention raised in the said

application is to the effect that sole public servant sought to be arraigned as accused namely Bhaskarrao Wankhede is no more alive and, therefore, now the learned Special Judge cannot frame charges under the Prevention of Corruption Act, 1988. Therefore, consequently, the Special Court has no jurisdiction to try the Special Case bearing No.11 of 2017 as held by the Honourable Apex Court in the matter of ***State through C.B.I. versus Jitendra Kumar Singh.***¹

8 As it is reported that the sole public servant sought to be arraigned as an accused passed away prior to filing of the charge-sheet, for securing ends of justice, it would be desirable that application at Exhibit 55 should be decided by the learned Special Judge, Thane peremptorily and, therefore, the Order :

ORDER

- (i) The application is allowed in terms of prayer clause (a) by directing the learned Special Judge, Thane to decide the application at Exhibit 55 in Special Case No.11 of 2017 peremptorily prior to deciding any other pending applications in the said case.

- (ii) The application is accordingly disposed of.

(A.M.BADAR, J.)

¹ (2014) 11 Supreme Court Cases 724.