

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 1071 OF 2019
IN
CRIMINAL APPEAL NO. 823 OF 2019

The State of Maharashtra Vs. ku. Prathibha Jambhulkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. T.A. Mirza, APP for the applicant / State
Mr. A.K. Sorde, Advocate for the non-applicants No.2 to 4

CORAM : V.M.DESHPANDE, J.

DATE : 9th DECEMBER, 2021.

This is an application filed on behalf of the prosecuting agency seeking leave to file appeal, challenging the judgment and order of acquittal passed by the learned Sessions Judge, Chandrapur, dated 03/09/2018 in Special Case No.12/2007.

2. This Court issued notices on this application. In pursuance to that, Shri A.K. Sorde, learned counsel appeared for the non-applicants, who are the original accused.

3. The learned Sessions Judge by the impugned judgment and order acquitted the accused persons for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

4. Heard Shri T.A. Mirza, learned Additional Public Prosecutor for the applicant / State and Shri A.K. Sorde, learned counsel appearing for the non-applicants No.2 to 4 / original accused, also perused the impugned judgment and also perused the relevant documents from the record and proceedings, which was already called for.

5. It appears that there was a trap by the Anti Corruption Bureau on accused No.1 Ku. Prathibha Dayaram Jambhulkar. The trap was successful. It is to be noted that during the course of the trial itself, Ku. Prathibha Dayaram Jambhulkar passed away and therefore, trial was ordered to be abated.

6. Be that as it may, in order to bring home the guilt of the accused persons, the prosecuting agency has examined in all six witnesses. The case of the prosecution was that the accused persons accepted Rs.3000/- from the complainant.

7. The learned Sessions Judge on appreciation of entire evidence found that there is a material discrepancy, which goes to the root of the prosecution case in the evidence of the complainant and the pancha witnesses. Further, it is to be noted that the deceased accused No.1 was a Warden of the Hostel, which was in the premises of the complainant. In paragraph No.13 of the judgment, it has been observed by the learned Sessions Judge that the condition of the premises was

dilapidated, therefore, the department issued notice to the complainant that the department will be vacating the premises. It is also observed that the complainant has admitted in the evidence that the rent was the only source of the livelihood. In that backdrop, the learned Sessions Judge has observed that false implication cannot be at all ruled out.

8. The law in respect of the consideration of the appeal against acquittal is well crystallized. Merely because another view is possible that itself is not sufficient for the Appellate Court to set aside the order of acquittal. After consideration of the entire evidence independently, I am of the view that no error was committed by the learned Sessions Judge, Chandrapur while appreciating the evidence, thereby resulting into the miscarriage of justice. In that view of the matter, I pass the following order.

ORDER

- i. Leave is refused to file appeal against the acquittal.
- ii. Consequently, the application is dismissed.
- iii. Since the leave to file the appeal is refused, Criminal Appeal No.823/2019 is also dismissed.

JUDGE

MP Deshpande

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P DESHPANDE
Signing Date:10.12.2021
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