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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 93 OF 2019

The State of Maharashtra	... Applicant
Vs.	
Sunil Gaurishankar Goenka and Anr.	... Respondents

Mr. S.S. Pednekar, APP for the Applicant.

Mr. Manan Sanghoi i/b. Mr. Ishwariprasad Bagaria for the Respondent Nos.1 and 2.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 30th SEPTEMBER 2019.

P.C. :

1 Heard. Being aggrieved by the judgment and order dated 14th December 2017 passed by the Special Judge, Greater Bombay in Special Case No.71 of 2019, thereby acquitting the accused of the offences punishable under sections 7 and 12 of the Prevention of Corruption Act, 1988, the State has filed the present appeal. The respondents herein are not public servants. It is the case of the prosecution that there was a crime registered against the respondents for the offence punishable under section 380 of the Indian Penal Code against accused no.1. That the respondents were coercing public servant to go slow and not to take any

coercive action against them and they have offered a sum of Rs.5 Lakhs to the officer and hence, he was constrained to file a complaint against the respondents. The prosecution had relied upon the transcript of the communication between the complainant and the respondents. The word used was “commitment”. At one point of time, the complainant had questioned the respondents as to how much they were paid and at that time, the accused Shashimohan Goenka said that “5” is the admitted figure.

2 It is pertinent to note that while submitting the transcript of the said communication/ conversation between the accused and the complainant, the prosecution had not placed on record a certificate under section 65B of the Indian Evidence Act and hence, the same could not be held to be admissible evidence. Moreover, no charge could be framed against the respondents under section 7 of the Prevention and Corruption Act, 1988. The learned counsel for the respondent has also stated that the complainant was dismissed from service on account of the allegations of corruption. The dismissal is challenged before the Maharashtra Administrative Tribunal. The learned Special Judge has referred to the evidence of the shadow witness who had not referred to any demand in

his substantive evidence before the Court. After conclusion of his deposition, outside the Court, he had regained his memory and suddenly remembered the facts. The shadow witness was a public servant. The learned Special Judge has felt that in such circumstances, he would be an unreliable witness and hence, has acquitted the accused. Upon considering the evidence adduced by the prosecution, the learned Special Judge has assigned justifiable reasons for acquitting the accused of the charges levelled against him.

3 In view of the above discussion, no interference is warranted. Hence, the application seeking leave to appeal stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)