

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2481 OF 2014

The State of Maharashtra .. APPLICANT

VERSUS

Anwarkhan s/o Chandkhan ... RESPONDENT

.....
Shri K.S. Patil, A.P.P. for the applicant / State
Mrs. S.T. Kazi, Advocate for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 8th January, 2015.

ORAL ORDER :

1. Heard learned A.P.P. for the applicant/ State and learned counsel for the respondent / accused. Perused record. This matter is under Prevention of Corruption Act. The learned A.P.P. is submitting that the evidence of trap has been disbelieved by the trial Court. According to the A.P.P., reasons given for disbelieving the evidence are not acceptable. The accused was Helper to the deceased accused No.1 Bhendale, who was Lower Division Clerk, regarding collection of bills and in the

process, demand was made from the complainant, and in the course of trap, on directions of the deceased, the amount was accepted by the accused and the same was recovered from him. The learned A.P.P. relied on the judgment in the case of State of Maharashtra Vs. Rashid Babubhai Mulani, reported in 2006 CRI.L.J. 794, and submits that, as per Section 20 of the Prevention of Corruption Act, 1988, there is certain presumption against accused when the money is accepted as gratification.

2. The learned counsel for the respondent/ accused has referred to various parts of the judgment to show that there are various contradictions and omissions. She is relying on the case of V.V. Subbarao Vs. State represented by Inspector of Police, A.P., reported in 2007 ALL MR (Cri) 1201 (S.C.) to submit that the presumption that money was accepted as illegal gratification cannot be raised in the absence of proof of demand. She is also relying on the case of Suraj Mal Vs. The State (Delhi Administration), reported in AIR 1979 SUPREME COURT 1408, to submit that mere recovery of the money from the accused could not fasten him with liability when the substantive evidence in the matter is not reliable. According to her, the discussion of the trial Court shows that the substantive evidence was not reliable. She also relied on the case of Rajendrakumar Laxmichand Gupta Vs. The State of Maharashtra, reported in 2013 ALL MR (Cri)

1425, to submit that, mere recovery of the tainted currency will not raise presumption against the accused.

3. Looking to the submissions of both sides, and going through the judgment of the trial Court, apparently, both sides are raising arguable points. It is necessary to reconsider the evidence and the reasonings recorded by the trial Court. The judgments relied on by both the sides can be considered in details when the appeal is considered. There are arguable points involved and the record shows that the evidence needs to be reappreciated. The observations of the trial Court in para 27 of the judgment show that, in the absence of document, the Court felt that it was difficult to accept that the accused had the duty of collecting the bills. The accused was Lineman and in the office if he was assisting the deceased Bhendale in the face of evidence of trap, searching of duty list requires reconsideration.

4. For above reasons, leave is granted. Application is converted into appeal.

5. Appeal is **admitted**.

6. Mrs. S.T. Kazi, learned counsel waives service on behalf of respondent/ accused after admission of the appeal.

7. Paper Book be got prepared.
8. Action under Section 390 of the Criminal Procedure be taken against respondent accused in the trial Court.

(A.I.S. CHEEMA, J.)

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