

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALS) No. 106 of 2015.

The State of Maharashtra } Applicant.
Vs
Dilip Balbhim Kengar and Anr } Respondents/Orig. accused.

Mr A.R. Patil, APP for the State - Applicant.

CORAM : A.R. JOSHI, J
DATE : 14th OCTOBER, 2015

P.C. :

1) Heard learned APP for the State on this application for leave to prefer appeal challenging the acquittal of the respondents/original accused nos. 1 and 2 in the matter of offences under Sections 7, 12, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988.

2) The case of the prosecution is that both the respondents - accused visited the house of the complainant and told him that one Santosh More had taken the name of the complainant as the person responsible for the suicide committed by said Santosh More. The respondents-accused also told the

complainant that one person by name Kanade Guruji is also named in the note left behind by Santosh More. According to the case of the prosecution, both the respondents demanded bribe amount of Rs. 2,00,000/- from the complainant and said another person by name Kanade Guruji. Allegedly, the amount of Rs. 75,000/- was paid to the respondents-accused after the total bribe amount was brought down to Rs. 1,00,000/-. The respondents were pursuing the complainant on various occasions for payment of remaining bribe amount of Rs.25,000/-. As such complaint was lodged after verification by overhearing the conversation on the telephone call made by the complainant to respondent-accused no.1. During the trap, respondent accused no.2 was called near one hotel by the complainant by making a telephone call and thereafter an amount of Rs.25,000/- handed over accused no.2 which he took and kept in his pant pocket. That time one pancha i.e. PW.no.2 accompanied the complainant PW no.1. Thereafter, a signal was given to the raiding party and accused no.2 was apprehended and then was taken to a nearby hotel and his

hands were inspected under ultraviolet lamp. He was apprehended. Subsequently, respondent no.1 was also apprehended.

3) During the trial, total three prosecution witnesses were examined i.e. PW no.1 the complainant, PW no.2 pancha and PW no.3 the Investigating Officer. The Sanctioning Authority was not examined as the defence accepted the grant of sanction. However, the trial Court came to the conclusion as detailed in paragraph no. 43 in the impugned judgment that the Sanctioning Authority, without applying the mind and satisfying itself about the commission of offence, accorded the sanction against both the accused.

4) Further, what weighed with the trial Court was that there was no initial demand proved, made by respondent/accused no.1 and that the bribe amount was not accepted by accused no.1 but it was found with respondent-accused no.2. The trial Court also discussed the substantive evidence of PW nos. 1 and 2 and found that there is variance on

the material aspect as to different timing at which the telephone call was made during pre-trap procedure for verification of the demand. The trial Court also discussed the aspect as to the variance in the evidence of PW nos. 1 and 2 as to in what manner the respondent no.2 was called near the hotel. It was the action on the part of the complainant to call respondent no.2 and give him money.

5) Considering the substantive evidence of three prosecution witnesses and considering that the said Kanade Guruji is not examined, much less, recording of his statement under section 161 of Cr.PC, it cannot be said that the judgment and order of the trial Court is of such a perverse nature so as to be interfered with in the appeal by allowing the State to re-agitate the matter.

6) In the result, there is nothing to allow the present application for leave to file appeal by the State. The application is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)