

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.564 OF 1999

The State of Maharashtra .. Appellant
Versus
Shamrao Laxman Patil & 4 ors .. Respondents

Mr. Deepak Thakre, APP for the appellant State.

None for the respondents.

CORAM : ABHAY M. THIPSAY, J.

DATED : 29th JUNE, 2015

ORAL JUDGMENT :-

1 The respondents were prosecuted on the allegation of their having committed offences punishable under section 120B of the IPC, 109 IPC, 465 IPC, 467 IPC, 468 IPC, 471 IPC, 477A of the IPC, 420 of the IPC as also the offence punishable under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947.

2 The learned Special Judge, Greater Mumbai acquitted all the respondents by an order dated 30th July 1999. The State of Maharashtra being aggrieved by the said order of acquittal, has after obtaining leave of this Court, filed the present Appeal challenging the same.

3 I have heard Mr. Deepak Thakre, learned APP for the
State.

4 Appeal stands abated as against the respondent no.1.

5 As none appeared for the other respondents, the
Appeal is being decided after going through the record and after
hearing the learned APP.

6 The facts of this case are rather peculiar. The order of
acquittal came to be passed because no evidence at all was
adduced by the prosecution before the trial court. In fact, the
order of acquittal has been recorded in the roznama by the learned
Special Judge.

7 A perusal of the order of acquittal reveals that the
case had been pending before the learned Special Judge since the
year 1986. It appears that the State did not engage any prosecutor
to prosecute the said case, and therefore, it remained pending for
a number of years. It appears that the learned Special Judge had
addressed communications to the concerned authorities of the
Government, and Officers from the Investigating Agency, but
inspite of the same, nothing was done in the matter. Nobody
appeared for the State to prosecute the matter. The learned
Judge, after noticing the facts elaborately in the roznama dated
30th July 1999 concluded that since inspite of repeated reminders,
appointment of prosecutor had not been made, conclusion that
the prosecuting agency i.e. Anti Corruption Bureau, an organ of
the State did not wish to prosecute the respondents could be

drawn. The learned Special Judge observed that the Court could not examine the witnesses in the absence of the prosecutor. The learned Special Judge also observed that charge was framed, but no evidence was adduced till then, and as there was no evidence against the accused, they were entitled to be acquitted.

8 Though the Code of Criminal Procedure does not specifically deal with a situation in which the prosecution does not adduce any evidence at all, it is clear that the Court cannot be made to wait till eternity for the prosecution to adduce evidence. The Court would have discretion to close the case and pronounce a judgment of acquittal if the prosecution does not come up with any evidence whatsoever to support the charges inspite of repeated opportunities given. It appears that the matter was pending before the learned Special Judge for a number of years and the State even did not bother to appoint any prosecutor to prosecute the same. Obviously, the witnesses were also not kept present before the Court, and there was no question of examining the witnesses.

9 A perusal of the record shows that charge was framed as back as in the year 1992. Therefore, if after a period of 7 years, the learned Judge closed the case for the prosecution, the same cannot be said to be wrong or improper.

10 I have gone through the Appeal Memo. In the Appeal Memo, there is no mention as to why the State could not appoint a prosecutor and why the State could not adduce any evidence for a period of 7 years.

11 Considering the circumstances in which the Special Judge was placed, the order of acquittal as passed by him, cannot be said to be improper, illegal or suffering from any other infirmity. There is, therefore, no merit in the Appeal.

12 Appeal is dismissed.

13 Let a copy of this judgment be forwarded to the Addl. Chief Secretary, Home Department so as to bring the fact of non-prosecution of a case relating to serious offences to his notice. He may take further appropriate action in the matter, as may be thought fit.

(ABHAY M.THIPSAY, J)