

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.26 OF 2014

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

RAJESH DATTATRAY CHANDPURE & ANR.)...RESPONDENTS

Ms.Anamika Malhotra, APP for the Appellant - State.

Mr.Sachindra B. Shetye, Advocate for Respondent No.1.

Mr.Sunil Kale a/w. Mr.Omkar G. Nagvekar, Advocate for Respondent No.2.

CORAM : ABHAY M. THIPSAY, J.

DATE : 9th MARCH 2015.

P.C. :

1 By this application, the State of Maharashtra is seeking leave to appeal from the judgment and order of acquittal of the respondents, as passed by the learned Special Judge, Thane. The respondents were accused of having committed offences punishable under Sections 7, 12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act.

2 I have heard Ms.Anamika Malhotra, the learned APP, in support of the application. I have heard Mr.Sachindra B. Shetye, the learned counsel for respondent no.1. I have heard Mr.Sunil Kale, the learned counsel for respondent no.2. With the assistance of the learned counsel, I have gone through the impugned judgment and the relevant part of the evidence of the *defacto* complainant, as was recorded during the trial.

3 The case of the prosecution, in brief, was that, the *defacto* complainant Stephen D'Souza wanted to have his name entered in the Revenue records in respect of a certain property left to him by his ancestors, and had therefore, given an application to the Tahsil Office. That, when he went to the Tahsil Office, to see what had happened to his application, he met respondent no.1, who directed him to meet respondent no.2. When he met respondent no.2, respondent no.2 allegedly told him that he would have to spend money for that. Respondent no.2, allegedly, told the *defacto* complainant that he would be required to pay a

bribe of Rs.2,000/- to respondent no.2 and an amount of Rs.5,000/- to Tahsil Office. That, as the *defacto* complainant did not want to give any bribe, he reported the matter to Anti Corruption Bureau, pursuant to which, a trap was laid and respondent no.1 was apprehended after he had accepted the tainted amount.

4 The learned APP fairly submitted that so far as respondent no.2 was concerned, no case was made out against him, and that, it was not intended to challenge the order of acquittal, so far as it related to him. She, therefore, confined her arguments with respect to the acquittal of respondent no.1.

5 A perusal of the reasons, that led to the acquittal of the respondents, as are reflected in the impugned judgment, indicates that, the learned trial Judge felt that, there was no satisfactory evidence with respect to the initial demand of bribe, and that, the story of actual trap, as given by the prosecution witness, was somewhat unbelievable.

6 It does appear that the trap was laid after verification of the initial demand, as made by respondent no.1. No arrangements to record the conversation between the *defacto* complainant and the respondents, however, were made. A panch had accompanied the *defacto* complainant and the alleged demand was made in the presence of the said panch witness. The panch, however, died before his evidence could be recorded in the trial. As such, there was no corroboration to the evidence of the *defacto* complainant with respect to the alleged demand of bribe.

7 The uncorroborated testimony of the *defacto* complainant was found to be not reliable by the learned trial Judge. The reasons, in that regard, are found primarily in paragraph 17 of the impugned judgment.

8 Though it may not be possible to agree with each and every conclusion arrived at by the learned trial Judge, on the whole, the doubt felt by him about the truth of the prosecution case, cannot be said to be unreasonable or not borne out from the

evidence adduced during the trial. Moreover, since there was no case against respondent no.2, that fact would be significant and relevant, while judging the truth of the prosecution case as a whole, and as such, also with respect to the allegations against respondent no.1.

9 Considering all the relevant aspects of the matter, the view of the trial court is certainly a '*possible view*'. It is well settled that in such a case, grant of leave would be futile.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)