

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.64 of 2014

The State of Maharashtra .. Applicant
Versus
Avinash Dattatraya Pendharkar .. Respondent

Ms.S.S.Kaushik, APP for the applicant State.

Mr.Sushant Karandikar, Advocate for the respondent.

CORAM : ABHAY M. THIPSAY, J.

DATED : 27th JANUARY 2015.

P.C. :

1 By this application, the State of Maharashtra is seeking leave to file an Appeal from the order of acquittal, as passed by the learned Judge of the Special Court in Special Case No.4 of 2007, acquitting the respondent herein of offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988.

2 I have heard the learned APP in support of the application. With her assistance, I have gone through the application and the annexures thereto, which include the impugned judgment and the notes of evidence that was adduced during the trial. I have also heard Mr.Sushant Karandikar for the respondents, who appeared before the Court pursuant to a notice.

3 The case came to be initiated on the basis of a complaint made by one Sandip Vartak (hereinafter referred to as 'the *defacto* complainant') to the Anti Corruption Bureau against the respondent. The respondent was, at the material time, working as a Junior Engineer in the MSEB. The *defacto* complainant claimed to be a licensed Contractor. The case of the prosecution was that the respondent had demanded an amount of Rs.16,000/- from the *defacto* complainant for giving quotations in respect of the Form No.A1, submitted by the *defacto* complainant to the MSEB. As per the prosecution, the respondent no.1 on 01/02/2001 asked the *defacto* complainant to come to his office on 5th February 2001 to pay an amount of Rs.10,000/- with the understanding that the remaining amount of Rs.6,000/- was to be paid about 2 to 3 days, thereafter. That, the *defacto* complainant then went to the office of the Anti Corruption Bureau, Thane on 3rd February 2001.

4 It is the case of the prosecution that the tainted amount of Rs.10,000/- was accepted by the respondent. The prosecution examined four witnesses during the trial. The learned trial Judge entertained a doubt about the truth of the prosecution case, and passed an order of acquittal.

5 The learned trial Judge observed that there was some inconsistency about the dates on which the initial demand was allegedly made. He observed that it was not clear whether the initial demand was allegedly made on 1st February 2001, or whether it was on 2nd February 2001. It also appears from the observations made by the learned trial Judge that he doubted the veracity of the *defacto* complainant as a witness.

6 The learned trial Judge also observed that when the demand before the actual delivery of the tainted amount was made, except the *defacto* complainant, there was nobody to witness the same. Though a panch witness had been sent along with the *defacto* complainant, it appears that the panch claimed to be outside the cabin of the respondent where the demand was allegedly made, and the money was passed.

7 The learned trial Judge also observed that the version of the *defacto* complainant was that after receiving the tainted amount, the respondent had handed over the quotations to him, and that, if that was so, the quotation papers also ought to have been verified under the ultra-violet light to show the presence of *Anthracin* powder thereon. Since this was not done, the learned trial Judge doubted the sincerity of the Investigating Agency.

8 After having gone through the paragraph nos.19 to 36 of the impugned judgment, it does appear to me that the doubt felt by the trial Judge about the truth of the prosecution version, was reasonable and justified. It cannot be overlooked that the initial demand made either on 1st February 2001 or 2nd February 2001, had not been verified before laying a trap, and in my opinion, this factor is also significant.

9 It is well settled that while considering the question of grant of leave, the principles governing the appreciation of evidence in Appeals against acquittal, are required to be kept in mind. It is well settled that if the view taken by the trial Court is a possible view, the same is not liable to be interfered with.

10 Since in this case, the view of the matter as taken by the trial court is certainly a 'possible view', grant of leave would be futile.

11 Leave refused.

12 Application is rejected.

(ABHAY M.THIPSAY, J)