

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (ALS) NO.49 OF 2015

The State of Maharashtra ..Applicant
V/s.
Ravindra Trimbak Tayade .. Respondent

Mrs.P.P. Bhosale, APP for applicant-State.
Mr.Dilip Bodke, for respondent.

CORAM : A. R. JOSHI, J.

DATE : 11th SEPTEMBER, 2015.

P.C.

1. Heard learned APP for the State on this application for leave to file appeal challenging the acquittal of the respondent in the matter of offences punishable under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988. Also heard learned counsel for the respondent-accused.

2. The case of the prosecution is that complainant had under taken some work for the Government Office, Maharashtra State Co-Operative Federation Limited, Pune for construction of some toilets. The bill was for Rs.2,30,000/- and

odd. After completion of work the complainant was demanding the bill amount. The respondent accused then working as Senior Clerk in the office demand bribe amount of Rs.57,000/- saying that the bill is excessive and that much amount is not payable to the complainant. Complainant was not ready to give the bribe and there was some hot exchange of words between them. Thereafter complainant stated that let his bill amount be entirely paid by cheque and then he will arrange for giving some bribe amount to the respondent-accused. Then it was so decided that for getting the cheque of bill amount the complainant will give a cheque of Rs.54,000/- and cash amount of Rs.3,000/- to the respondent-accused. Thereafter, the complainant lodged a complaint with the ACB, Pune. Usual pre-trap panchannama procedure was conducted in the ACB Office. Thereafter, the complainant had a talk with the respondent-accused and initially it was decided to come near 'Inox Theater' but at that place respondent-accused did not reach and again on telephone he instructed the complainant to come near one hotel by name 'Koyala' at Koregaon Park. Accordingly, the complainant along with panch P.W.No.2 went

near hotel 'Koyala' on motorcycle. They were followed by the raiding party members. By the side of the hotel on the road the transaction took place regarding demand and acceptance of cheque and cash amount. It was observed by panch witness no.2. After accepting the cheque and amount by the respondent-accused he counted the notes and put the cheque and amount in his left side shirt pocket. By that time after giving signal the raiding party came on the spot and they apprehended the respondent-accused and he was made to sit in a jeep and all went to the ACB office where in fact the money and cheque were taken from the pocket of the respondent-accused.

3. The trial Court examined the substantive evidence of P.W.No.1 and P.W.No.2 pancha. The trial Court observed in para no.13 of the impugned judgment that there is variance in the substantive evidence of P.W.No.1 and P.W.No.2 inasmuch as according to the reasoning given by the trial Court substantive evidence of panch P.W.No.2 say that the money and the cheque from the possession of the respondent-accused were taken then and there on the spot, where the raid was

conducted and then the accused was taken to the ACB office. It was held by the trial Court that there is a variance inasmuch as according to the evidence of P.W.No.1 complainant the money and the cheque was not taken from the custody of the accused on the spot but he was apprehended and made to sit in the jeep and only after reaching the ACB office the money and the cheque from the shirt pocket of the respondent-accused was taken out. The substantive evidence of panch P.W.No.2 and also of complainant P.W.No.1 is brought to the notice of the learned APP for the State. Panch witness nowhere mentioned in the entire evidence that the cheque and bribe amount were taken out from the shirt pocket of the respondent-accused then and there on the spot itself. On the contrary he mentioned that the cheque amount was taken from the shirt pocket after the respondent-accused is taken to the ACB office. In fact this is a gross mistake committed by the trial Court in appreciating the evidence of panch witness in comparison with the evidence of P.W.No.1. This aspect needs careful consideration at the time of the final adjudication of the appeal.

4. Apart from the above the trial Court had also acquitted the respondent-accused on the count that P.W.No.4 was not authorized to grant sanction to prosecute the accused. Apparently the trial Court was influenced by some answers given by the said sanctioning authority during cross-examination. In the examination-in-chief earlier P.W.No.4 had stated that he was working as a Chief Executive Officer in Maharashtra State Co-operative Federation Limited, Pune and the Federation has empowered him to do certain act by way of resolution passed by the Board of Directors. During the cross-examination said P.W.No.4 had accepted that the Federation has its own rules and regulations. He further answered in cross-examination that the authority to accord sanction is with the Board of Directors and not with the CEO. Admittedly, the said rules and regulation of the Federation were not produced before the Court. As such the aspect as to the validity or otherwise of the sanction needs consideration at the time of final adjudication of the appeal.

5. In view of the above in the opinion of this Court the

present application for leave to file appeal is required to be allowed, allowing the State of Maharashtra to re-agitate the issue regarding acquittal of the respondent-accused. The application for leave to file appeal is allowed.

6. Appeal is admitted.

7. Instead of issuance of process under section 390 of Cr.P.C. against the respondent-accused he is directed to appear before the trial Court on 05th October 2015 with direction to the trial Court to release him on bail in a sum of Rs.5,000/- with one surety.

(A. R. JOSHI, J)

CERTIFICATE

Certified to be true and correct copy of the original
signed Judgment/order.