

1/4
Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 57 of 2015

<i>The State of Maharashtra</i>	<i>..Applicant.</i>
<i>Vs</i>	
<i>Udhavrao Namdeo Phunde</i>	<i>..Respondent.</i>

Mr A.R. Patil, APP for the State.
Mr Rohan Nahar, Advocate for the respondent.

CORAM : A.R.JOSHI,J

DATE : 11th August, 2015

P.C. :

- 1) Heard rival submissions on this application for leave to file appeal preferred by the State challenging the acquittal of the respondent in the matter of offence punishable under section 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988.
- 2) The impugned judgment and order was passed by the Special Judge (Anti Corruption), Pune on 9th February, 2015. The case of the prosecution is that the complainant PW no.2 was in need of 7/12 extract of his properties and for that purpose the present respondent/accused, then Talathi had demanded bribe amount of Rs.1000/-. The complainant chose not to give the bribe but to lodge a complaint. Accordingly a trap was laid. Two panch witnesses were

2/4

called at the office of Anti Corruption Bureau (ACB) and pre-trap panchnama procedure was conducted in which the effect of anthracene powder in the ultra violet light was shown to the panchas and the complainant. Bribe amount i.e. two currency notes of Rs.500/- were smeared with anthracene powder and were kept in the pant pocket of the complainant. Directions were given to the complainant to give the said amount to the respondent accused on demand. Pancha no.1 was asked to accompany the complainant and to observe the entire incident.

3) In the present matter, total four witnesses were examined. PW 1 is the sanctioning authority i.e. Sub-Divisional Officer. PW no.2 is the complainant, PW no.3 is the second pancha and PW no.4 is the Investigating Officer.

4) It is significant to note that pancha no.1 who was along with the complainant during the trap could not be examined due to his demise. As such the prosecution case rests only on the independent evidence of PW no.3 i.e. pancha no.2.

5) What weighed with the trial Court, were the following instances :-

(i) Firstly, from the substantive evidence of the complainant PW no.2, it was ascertained by the trial

3/4

Court that the complainant was bent upon teaching a lesson to the respondent-accused, then Talathi as the respondent had demolished certain structures of the relative of the complainant and also had lodged the case under section 353 of IPC against another relative. It is also held by the trial Court, as the admitted position, that prior to the date of the trap the concerned 7/12 extract was already obtained by the complainant and as such there was no cause for the complainant to again go to the office of the respondent for giving the money.

ii) Secondly, it is held by the trial Court that most of the part of the substantive evidence of PW no.3 pancha no.2 is hear-say inasmuch as said PW no.3 stated what were the actions and talk by pancha no.1 with the police officials.

iii) Thirdly, the trial Court held that PW no.1 was not the competent authority to grant sanction as not the SDO but the Collector is the appointing and removing authority of the officer of a rank of Talathi.

iv) Fourthly, it is considered by the trial Court that the said pancha no.2 i.e. PW no.3 had also acted as a pancha for the Anti Corruption Bureau in another trap case and

v) Lastly it is held by the Trial Court that there was no independent witness on actual demand and acceptance of bribe.

4/4

6) Considering the substantive evidence of PW nos. 1 to 4 and considering the factual position, as discussed above, in the opinion of this Court, there is nothing to re-agitate the matter and to come to a different conclusion than that arrived at by the Trial Court. This is, more so, in considering the present matter for challenge to the acquittal of the respondent. In other words, the impugned judgment and order cannot be considered as of such a perverse nature so as to be interfered with.

7) In the result, there is nothing to entertain the present application preferred by the State and the same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)