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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL STAMP NO. 502 OF 2014

The State of Maharashtra

.. Applicant

Vs.

Prakash Ram Thapa @ Prakash Nepali and ors.

.. Respondents

Mr. H. J. Dedhia, APP for applicant-State.

CORAM: P. V. HARDAS &
A. S. GADKARI, JJ.

JULY 01, 2015.

P.C.

1. Since we have condoned the delay, Registry to register this appeal. This appeal is heard for admission at the request of learned APP, who appears for the appellant – State.

2. The State, by this appeal, challenges the judgment of the Special Judge, MCOC Act, dated 31/8/2010 in MCOC Special Case No. 22 of 2006, acquitting the respondents for offence punishable under Sections 120-B, 450, 452, 395, 397 of the Indian Penal Code, under Section 3(1) and (2) punishable under Section 25 of the Arms Act, under Section 37(1) (a) of the Bombay Police Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

3. With the assistance of the learned APP, we have perused the findings recorded by the trial court. In respect of the conspiracy, the trial court at paragraph 75 has referred to the evidence of PW 23 – Prakash. The trial court, upon appreciation of the evidence, came to the conclusion that in the light of the variance in his testimony and the fact that the prosecution could not examine Irfan Sikander Kazi, the trial court recorded a finding that the prosecution had utterly failed to prove the charge of conspiracy. The trial court, at paragraph 77, has further observed that since there was no evidence in respect of the alleged dacoity committed by the accused and there was no evidence that the accused were members of an organised crime syndicate headed by deceased accused no.1, the conviction of the respondents-accused was unsustainable. In respect of the charge of dacoity, the trial judge has referred to the testimony of PW 12, PW 25, PW 38 and the other witnesses and came to the conclusion that in the light of the substantial variances in their testimony, no reference at all could be placed on the testimony of these witnesses in support of the charge of dacoity. The trial court, thus, upon appreciation of the evidence, extended the benefit of doubt to the accused and acquitted them.

4. With the assistance of the learned APP, we have perused the findings recorded by the trial court. Upon its perusal, in our opinion, the view taken by the trial court is a possible view to be taken on the basis of the evidence on record. We do not notice any perversity in the reasoning of the trial court to warrant any interference in this appeal against acquittal.

5. Accordingly, there is no merit in the appeal and the appeal is, therefore, dismissed, confirming the acquittal of the respondents-accused.

(A. S. GADKARI,J.)

(P. V. HARDAS,J.)