IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.206 of 2014

The State of Maharashtra .. Applicant
Versus
Santosh Vitthalrao Vairagade & Anr .. Respondents

Mr.Deepak Thakre, APP for the applicant State.
Mr.Sunil Kale, Advocate for respondent no.1.
Mr.Anand Patil, Advocate for respondent no.2.

CORAM : ABHAY M. THIPSAY, J.
DATED : 13th FEBRUARY, 2015

P.C. :

1 By this application, the State of Maharashtra is seeking leave to file an Appeal from the order of Acquittal passed by the Special Judge under the Prevention of Corruption Act acquitting the respondents who were accused in the said case of offences punishable under section 7, section 12 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1989.

2 I have heard Mr.Deepak Thakre, learned APP for the applicant State. I have heard Mr.Sunil Kale, learned counsel for the respondent no.1. And Mr.Anand Patil, learned counsel for respondent no.2.

3 With the assistance of the learned APP and the counsel for the parties, I have gone through the impugned

judgment and also glanced through the copy of the notes of evidence that was adduced during the trial.

4 It appears that some criminal cases were registered against the *de facto* complainant – Vikas Chaurasia. It also appears that the respondent no.1 was an Inspector of Police attached to Uran Police Station at the material time who was investigating into the said case. The respondent no.2 was earlier working with the *de facto* complainant. The case of the prosecution in brief was that in order to show favour to the *de facto* complainant, the respondent no.1 had been demanding illegal gratification, and that the amount of illegal gratification was actually handed over by the *de facto* complainant to the respondent no.2 who was supposed to pay the same to the respondent no.1. The *de facto* complainant actually did not want to pay bribe and had therefore, reported the matter to the Anti Corruption Bureau, where-after the trap was laid, and the respondent no.2 was apprehended after he had allegedly accepted the tainted money.

5 Since it is an admitted position that the respondent no.2 was acting for and on behalf of the *de facto* complainant, there is an obvious weakness in the prosecution case when it was the respondent no.2 who was trapped with tainted money, and not the respondent no.1.

6 Apart therefrom, there appear to be a number of weaknesses in the prosecution case due to which the learned trial Judge doubted the truth of the prosecution version.

7 It appears that the *de facto* complainant in his evidence stated about the initial demand which had been made by the respondent no.1 on 9th February 2007. The *de facto* complainant also stated before the Court that this talk was recorded on a tape-recorder. However, the tape-recorded conversation was not at all produced before the Court during the trial. The *de facto* complainant deposed that the voice recorder had been attached to his clothes which he was wearing, but the other witnesses did not make out any case to that effect.

8 The learned Judge also observed that there was no evidence to show the demand made by the respondent no.1 through the respondent no.2 which was the case of the *de facto* complainant. The learned Judge also observed that when the fact of the initial demand was not satisfactorily established, the finding of the tainted amount in possession of the respondent no.2 was not sufficient to prove the prosecution case.

9 It cannot be said that the view of the matter as taken by the Special Judge, is not a possible view. Considering this, this does not appear to be a fit case where leave to Appeal should be granted.

10 Leave refused.

11 Application is rejected.

(ABHAY M.THIPSAY, J)