

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.111 OF 2015

The State of Maharashtra .. Applicant
Versus
Hanmant Apanna Chavan and Anr .. Respondents

Mr.A.R.Patil, APP for the applicant State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 29th JANUARY, 2016

ORAL ORDER :-

1 The respondents were prosecuted on the allegation of having committed offences punishable under Sections 7, 12 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned Special Judge, Sangli found them not guilty and acquitted them. The State of Maharashtra is aggrieved by the said order of acquittal and is, therefore, by the present application, seeking leave to file an Appeal therefrom.

2 I have heard Mr.A.R. Patil, learned APP for the applicant State in support of the application. He has taken me through the impugned judgment and the notes of the relevant evidence, copy of which is annexed to the application.

3 The respondent no.1 at the material time was working as a Talathi. The respondent no.2 was said to be his private clerk. The tainted amount was allegedly accepted by the respondent no.2.

4 The reasoning of the learned Special Judge, leading to acquittal is found from paragraph no.33 onwards of the impugned judgment. The learned Special Judge did not believe the evidence of a prior demand by the respondent no.1. In this context, he referred to certain admissions given by the complainant in his cross-examination. These observations of the Special Judge are found in paragraph no.35 of the impugned judgment.

5 The learned Judge also observed that initially the trap was laid in the Talathi office at Shirgaon, but that failed as the respondent no.1 was not present there. It is thereafter that the trap was laid at the Talathi office, Panmalewadi. Further, the learned Judge observed that after the trap, which was said to be successful, the respondent no.1 left the place and went ahead by his motorcycle. The evidence revealed that search for the respondent no.1 was taken for about 1 ½ to 2 hours. The learned Judge felt a doubt as to why if the trap was indeed successful, the respondent no.1 could not be apprehended on the spot.

6 The learned Judge also observed that the theory of the respondent no.1 that the complainant had enmity with him, was likely. The complainant had admitted in the cross-examination that in the year 2006, he was prosecuted by the respondent no.1 for carrying sand illegally in trollies attached to a tractor, and that the respondent no.1 was fined on that occasion. Thus, the learned Judge took into consideration the possibility of there being strained relations between the complainant and the respondent no.1.

7 The learned Judge also did not accept the theory of the acceptance of the bribe amount. He held that the respondent no.2 was not shown to be concerned with the respondent no.1 in any way, and therefore the acceptance of the amount by the respondent no.2, if any, could not be construed as an '*acceptance by the respondent no.1, through the respondent no.2*'.

8 The complainant as well as the panch had admitted before the learned Judge in their evidence that they had read their statements recorded in the course of investigation before giving evidence. The learned Judge held that such stealthily 'refreshing their memory' before entering the Court, was not proper and did cast a doubt on the reliability of the version of these witnesses.

9 The conversation between the respondent no.1 and the complainant was supposedly recorded in the Digital Voice Recorder, but the same was not proved. The CDs that were said to have been prepared were not so prepared under any panchnama.

10 The panch had admitted that after reaching the Talathi office, Panmalewadi, there was no conversation between the complainant and respondent no.2 regarding the work of the complainant, or even between the complainant and the respondent no.1 regarding any demand of money.

11 The learned Judge also observed that though the prosecution case was that demand of money was made

telephonically by using the cell phones, the Call Data Records had not been proved.

12 It was also observed that there was much gap between the demand of bribe and the raid, and that there was no evidence that any time and place was fixed for receiving the bribe.

13 The appreciation of evidence as done by the learned Special Judge does not seem to be suffering from any error or infirmity. The doubt felt by the learned Special Judge about the truth of the prosecution version cannot be said to be unreasonable.

14 It is well settled that while considering the question of grant of leave, the grounds on which interference with the order of acquittal would be justified, need to be kept in mind. It is well settled that where the view taken by the trial Court leading to acquittal is a *possible view*, this Court would not interfere. In this case, certainly, the view of the matter as taken by the learned Magistrate, is a *possible view*.

15 Grant of leave would be futile.

16 Leave refused.

17 Application rejected.

(ABHAY M.THIPSAY, J)