IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.50 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

NARENDRA EKNATH KASAR)...RESPONDENT

Shri V.B.KondeDeshmukh, APP for the Applicant - State.

Shri A.P.Mundargi, Advocate for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 17th MARCH 2016.

<u>P.C.</u> :

1 The respondent was prosecuted on the allegation of having committed the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (P.C.Act). The Special Judge, Palghar, after holding a trial, found him not guilty, and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal, and is, by the present application, seeking leave to file an appeal therefrom.

2 Though the application for leave to appeal was not filed within the prescribed period, by consent, the application for leave to appeal was heard on merits.

3 I have heard Shri V.B.KondeDeshmukh, the learned APP for the applicant State. I have heard Shri A.P.Mundargi, senior advocate, for the respondent. With their assistance, I have gone through the impugned judgment, a copy of which is annexed to the application. I have also been taken through the relevant parts of the evidence, that was adduced during the trial.

4 For the sake of convenience and clarity, the respondent shall hereinafter be referred to as 'the accused.'

5 The prosecution case, as put forth before the trial court, was that, one Sadanand Karandikar (hereinafter referred to as 'the complainant') was, at the material time, doing liquor business in the name and style of 'Sanjay Wine Stores' at Dahanu.

The accused, at the material time, was working as Assistant Commissioner of Sales Tax, at Palghar. The Sales Tax department wanted to verify the account maintained by the complainant, and as such, the verification was done by the accused by visiting the shop of the complainant on 14th March 2008. That, at that time, the accused is alleged to have made a demand of Rs.5,00,000/-, as and by way of illegal gratification, which amount was after negotiations, reduced to Rs.2,50,000/-. Since the complainant did not want to pay the amount, he reported the matter to the Anti Corruption Bureau (ACB), pursuant to which, after making verification of the demand, a trap was laid. The prosecution case was that, after the accused had accepted the tainted amount, he was apprehended.

6 Four witnesses were examined by the prosecution during the trial - the first being the complainant himself, the second being panch Ashok Jatadhar, the third being Rajesh Chaudhary – another panch, and the fourth being Vilas Jagdale, the trap laying / Investigating Officer.

7 A perusal of the impugned judgment shows that the learned Special Judge doubted the fact of initial demand of illegal gratification allegedly made by the accused. He also doubted whether the tainted amount was accepted by and / or recovered from the possession of the accused.

8 While considering the evidence of the complainant, the learned Special Judge noted that there were some significant omissions, and that, there had been an attempt to improve over his initial version. According to the complainant, the accused had told him that the complainant should pay an amount of Rs.2,50,000/-, otherwise, the accused would sent a challan of Rs.8,00,000/- to Rs.10,00,000/-; but this was not stated in the First Information Report (FIR) lodged by the complainant.

9 The learned Special Judge noted that as per the evidence of the complainant, the accused had made a demand for illegal gratification on 14th March 2008 itself, and in the shop of

the complainant itself. However, the learned Special Judge noted that in the complaint / FIR lodged by the complainant, he had not mentioned about there being any demand for illegal gratification by the accused at that point of time, i.e., in the wine shop.

10 The case of the prosecution is that on 14th March 2008, after the accused had visited the shop of the complainant with a member of his staff, he had suggested to the complainant that they should go to Hotel Atithi, take lunch there, and discuss the matter. According to the complainant, after going to the hotel, the accused asked the member of his staff i.e. Inspector Wadu and the complainant's accountant Bhagwan Patil, who were accompanying them, to go out, and then, by taking a tissue paper, wrote a figure of Rs.5,00,000/- on it, as and by way of demanding that amount. This has also been doubted by the learned Special Judge, on an appreciation of evidence of the complainant, and after taking into consideration that, no witnesses, though were available, were examined to show that the complainant and the accused had indeed gone to Hotel Atithi.

11 When the matter was reported to ACB, it was decided by the Investigating Officer to verify the allegation about demand of a bribe. For that purpose, the complainant was asked to contact the accused on his mobile telephone, by making a call from the mobile telephone of the complainant and the conversation was to be recorded using a digital recorder. The case of the investigating agency was that such conversation was recorded. However, such conversation was not produced before the court during the trial.

12 The prosecution case was that, after the amount of Rs.2,50,000/- was handed over to the accused by the complainant, the accused took out an amount of Rs.1,00,000/- therefrom, added sixteen notes of Rs.500/- from his cupboard to that amount, and then, took the amount to the office of Mr.Bodke, who was then the Deputy Commissioner of Sales Tax, whose office was situate on the second floor. The learned Special Judge thought it rather improbable that things would have happened that way and disbelieved these facts for a number of reasons.

13 The learned Special Judge also observed that, in the CDR of the mobile telephone of the complainant, the call allegedly made by the complainant to the accused at about 3.30 p.m. on 24th March 2008, i.e. the date of verification, was not reflected. The learned Special Judge noted that the complainant had no satisfactorily explaination in that regard, and though the complainant said that the call in question might have been recorded in the CDR of his another mobile, he did not give any details of any such other mobile.

14 The learned Special Judge, for reasons that are reflected in paragraphs 18, 19, 20 and 21 of the impugned judgment, came to the conclusion that there was either no verification of the alleged demand, or that, at the time of verification, no demand was actually made by the accused.

15 The learned Special Judge also doubted the story of the prosecution with respect to the acceptance of the bribe. He observed that neither the complainant, nor the panch Jatadhar

said anything about traces of anthracene powder being noticed on the hands of the accused. This aspect of the matter was stated only by the Investigating Officer Vilas Jagdale.

16 I have gone through the reasoning of the learned Special Judge and particularly the reasoning reflected in paragraphs 13, 14, 15 to 22, and 26 to 35 of the impugned judgment.

17 I do not find that the appreciation of evidence, as done by the learned Special Judge, and his reasoning suffers from any error, impropriety or illegality. The doubt about the truth of the case of the prosecution, as felt by the learned Special Judge, cannot be said to be unreasonable.

18 In any case, the view of the matter, as taken by the learned Special Judge, is a '*possible view*.' It is well settled that in such a case, it would be futile to grant leave to appeal.

19 Leave refused.

20 The application is rejected.

(ABHAY M. THIPSAY, J.)