

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.100 OF 2015

THE STATE OF MAHARASHTRA

)...APPLICANT

V/s.

RAJENDRA BHAULAL PAWAR

)...RESPONDENT

Smt.PPBhosale, APP for the Applicant - State.

Shri A.PKulkarni a/w. Shri Manoj Badgujar, Advocate for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 10th MARCH 2016.

P.C. :

1 The respondent, who was working as Assistant Sub-Inspector of Police at the material time, was prosecuted on the allegation that he had committed the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (P.C.Act). The learned Special Judge, Baramati, after holding a trial, held the applicant not guilty, and passed an

order of acquittal. The State of Maharashtra, being aggrieved by the said order of acquittal, has filed the present application seeking leave to file an appeal therefrom.

2 I have heard Smt.PP.Bhosale, the learned APP for the State. I have heard Shri A.P.Kulkarni, the learned counsel for the respondent. With their assistance, I have gone through the application, the impugned judgment and the copies of the notes of evidence recorded during the trial, that are annexed to the application.

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

4 One Bhagwan Jagtap, an agriculturist, (hereinafter referred to as 'the complainant') who was himself an accused in two cases, lodged a report against the accused with Anti Corruption Bureau (ACB) on 4th October 2012, alleging that the accused had demanded a bribe from him. This allegation of

demand for bribe was duly verified, and thereafter, a trap was laid. The prosecution case is that the accused accepted the tainted amount, after which, he was apprehended.

5 The prosecution examined three witnesses during the trial, the first being the complainant – Bhagwan Jagtap himself, the second being Banduke – a panch, and the third being Rajendra Vibhande, Inspector of Police, who laid the trap and carried out further investigation into the matter.

6 The learned Special Judge held that the evidence with respect to the initial demand was not satisfactory. He observed that, the official act that was to be performed by the accused in return for the bribe was stated differently by the complainant on different occasions.

7 No place for acceptance of the amount of bribe had been fixed.

8 The learned Special Judge also observed that the complainant had an obvious grudge against the accused, as the accused was the Investigating Officer in two cases in which the complainant was an accused, and as the complaint lodged by the uncle of the complainant against one Lala Gaikwad was not dealt with by the accused, as per the desire of the complainant.

9 The learned Special Judge also observed that even the evidence with respect to the acceptance of bribe was not free from doubt. Among other things, he observed that, the story of the prosecution was that the tainted amount was accepted by the accused, was counted by him and then kept in the drawer of the table in his office. However, admittedly, traces of anthracene powder were noticed only on the finger tips of the right hand of the accused. The learned Special Judge reasoned that, if the accused had accepted the money, counted it and kept it in the drawer, traces of anthracene powder ought to have been found on the finger tips of both the hands of the accused.

10 According to the prosecution, the investigating agency was in possession of a tape recorded conversation between the accused and the complainant, which according to them, would support the theory of a demand having been made by the accused for illegal gratification. However, that conversation or the recording made by using Digital Video Recorder was not produced before the court during the trial.

11 The doubt about the truth of the prosecution case, as felt by the learned Special Judge, appears to be reasonable. The same indeed arises on the basis of the evidence of the prosecution.

12 In any case, the view of the matter as taken by the learned Special Judge, is a *possible view*.

13 It is well settled that in such a situation, grant of leave would be futile.

14 Leave refused.

15 The application is rejected.

(ABHAY M. THIPSAY, J.)