

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.105 OF 2015

The State of Maharashtra .. Application

Versus

Gopichand Khemsingh Rathod .. Respondent

Mrs.P.P. Bhosale, APP for the applicant State.

Mrs.Vrishali Raje, Advocate for respondent no.1.

CORAM : ABHAY M. THIPSAY, J.

DATED : 15th APRIL 2016

P.C. :

1 The respondent was prosecuted on the allegation of having committed offences punishable under section 7 and section 13(1)(d) of the Prevention of Corruption Act. The learned Special Judge, Barshi, after holding a trial, found him not guilty and passed an order of acquittal. The State of Maharashtra being aggrieved by the said order of acquittal, is by the present application, seeking leave of this Court to file the Appeal therefrom.

2 I have heard Mrs.P.P. Bhosale, the learned APP in support of the application. I have heard Mrs.Vrishali Raje, learned

counsel for the respondent. With their assistance, I have gone through the application, the annexures thereto which are the impugned judgment and the notes of evidence recorded during the trial.

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

4 The respondent was, at the material time, working as the Chief Officer in the Municipal Council of Barshi. The *defacto complainant* – Vinod Kate who was a contractor who had been given the contract of collecting garbage from Barshi City, and depositing it in the depot of Municipal Council, Barshi. According to the complainant, he used to get monthly payments in respect of the bills submitted by him in accordance with the contract, and that, the accused used to accept 2% commission on the bills which the complainant had been paying. That the amount for the bill for the period from October 2009 to August 2009 worth Rs.10,26,535/- was payable to the complainant and accordingly, the complainant had furnished the bills on 4th October 2010. the bills had been sanctioned and the amount was in the process of disbursement. When the complainant had been to the accused, on one day, and had requested him to pay the amount of bill, the accused demanded a bribe of 2% on the total amount of bill, and the amount was negotiated as Rs.20,000/-. The bill of Rs.10,26,535/- was reduced to Rs.9,60,000/-. That the complainant did not want to pay the bribe, and therefore, reported the matter to ACB, Solapur. The allegations made in the complaint about the demand were verified and thereafter a trap was laid.

The accused was apprehended after he had accepted the tainted currency notes from the complainant.

5 Four witnesses were examined during the trial. The first witness is the complainant himself. The second, a panch. Third, the Investigating Officer and fourth, an expert in the matter of identification of voice.

6 The learned Judge entertained a doubt about the truth of the prosecution version for a number of reasons. The learned Judge held that the allegation of the initial demand had not been satisfactorily proved.

7 The learned Judge in paragraph no.17 of the impugned judgment observed that the complainant was a regular contractor, and that he was tendering bills regularly and they were being paid through cheques regularly. In order to collect evidence about the demand, the complainant had been provided with a micro tape-recorder in which the conversations between the complainant and the accused were recorded. The learned Judge observed, among other things, that the recorded conversations did not support the version of the conversations as given by the complainant.

8 Among other things, the learned Special Judge observed that the bills tendered by the complainant were already cleared, and cheque had been issued, which the complainant could have collected from the cashier without meeting the accused. The learned Judge observed that the evidence showed that the cheque

was ready on 3rd November 2010 itself, and that the complainant could have collected it from the cashier, and that, as such, the complainant's approaching the appellant for clearing the bills thereafter, was not believable.

9 The accused had taken a stand that he had been falsely implicated. According to him, the complainant had a motive to implicate him falsely as the complainant's contract was being terminated by reason of his not having the necessary equipments to carry out the work effectively. According to the accused, the complainant was aggrieved by this, and had falsely implicated the accused.

10 The learned Special Judge also doubted the opinion given by the expert witness about the identity of the voices, but even if that aspect of the matter is ignored, it appears that the conversations were not properly proved; and it further appears that the same, though indicates some understanding between the complainant and the accused, does not support the version of the complainant, sufficiently.

11 On the whole, the doubt felt by the learned Special Judge about the truth of the prosecution case, cannot be said to be unreasonable. The view of the matter, as taken by him, is a *possible view*.

12 It is well settled that in such cases, grant of leave would be futile.

13 Leave refused.

14 Application is rejected.

(ABHAY M. THIPSAY, J)