

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.139 OF 2015

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SHANTARAM MARUTI SURYAWANSHI & ANR.)...RESPONDENTS

Shri A.R.Patil, APP for the Applicant – State.

Shri Vishal Laxman Kolekar, Advocate for the Respondents.

CORAM : ABHAY M. THIPSAY, J.

DATE : 8th MARCH 2016.

P.C. :

1 The respondents were prosecuted on the allegation of having committed the offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (P.C.Act). The learned Special Judge, Pune, after holding a trial, acquitted them. Being aggrieved by the said order of acquittal, the State of Maharashtra has approached this court seeking leave to file an appeal from the said acquittal.

2 I have heard Shri A.R.Patil, the learned APP for the State in support of the application. With his assistance, I have gone through the impugned judgment carefully.

3 For the sake of convenience and clarity, the respondent no.1 shall hereinafter be referred to as the 'accused no.1' and the respondent no.2 as the 'accused no.2.'

4 The case of the prosecution, as put forth before the trial court, was that, Civil Contractors Amit Jori and Vinay Wable had authorized Dilip Medage – the complainant to act on their behalf. The accused no.1 was, at the material time, working as a Sectional Engineer in the Public Working Department (PWD). That, till March 2011, the Contractors had completed 90% of the work, and had requested the accused no.1 to prepare their bills. That, at that time, the accused no.1 had demanded an amount of Rs.1,25,000/- for passing the bills. He had said that unless that amount would be paid, he would not pass and clear the bills of the Contractors. However, finally on the

repeated requests of the complainant, the bills were passed. Later, the entire work was completed and the accused no.1 was requested to pass the bill for Rs.3,50,000/-. Accused no.1 allegedly demanded an amount of Rs.1,25,000/- as illegal gratification and said that unless that amount would be paid, he would not process the bill. The complainant showed his readiness to pay an amount of Rs.50,000/- as the first installment, but as actually he was not willing to pay any bribe, he approached the Anti Corruption Bureau (ACB) on 3rd August 2011, and reported the matter. A verification of the demand was allegedly made by asking the complainant to talk to the accused no.1 on his mobile telephone and by keeping the speaker of the phone on. Thereafter, a trap was laid. When the complainant and the panch went to offer the amount to the accused no.1, the accused no.2 happened to be present there, and that, as per the directions of the accused no.1, the amount was actually accepted by the accused no.2. The raiding party recovered the tainted amount from the accused no.2.

5 Four witnesses were examined during the trial, viz., the complainant (PW1), a panch Vidhyadhar Gaikwad (PW2), the trap laying officer ACP Rajendra Galande (PW3), and Shamalkumar Mukherjee (PW4), who was examined for proving the sanction to prosecute the accused no.1, as issued by the Competent Authority.

6 The learned Special Judge doubted the truth of the prosecution case for a number of reasons. He observed, firstly, that, though the conversation that took place between the accused no.1 and the complainant was recorded with the help of a voice recorder, such recorded conversation was not produced before the court. The conversation had been made by telephonic contact but even the Call Data Records thereof were not produced.

7 The evidence also revealed that the accused no.1 had been transferred on 1st August 2011. It was, therefore, argued before the learned Special Judge that, at the material time, i.e., on 3rd August 2011, the accused no.1 was not in a position to show

any favour to the complainant. The learned Special Judge also observed that the panch witness had admitted that the complainant himself had offered the bribe during the conversation, and that, there was actually no demand of bribe coming from the accused no.1. In these circumstances, the failure of the prosecution to produce the Call Data Records of the mobile telephone was thought by the learned Special Judge to be adversely affecting the prosecution case.

8 The substance of the conclusion arrived at by the learned Special Judge is that the prosecution had failed to prove the initial demand, and that, under these circumstances, the recovery of tainted currency notes from the possession of the accused no.2 – and not from the accused no.1 - was of no consequence.

9 Admittedly, in the evidence, no link or connection between the accused no.1 and accused no.2 had been established.

10 In these circumstances, the doubt felt by the learned
Special Judge cannot be said to be unreasonable. The view taken
by the learned Special Judge is, in any case, a *possible view*.

11 In such a situation, grant of leave would be futile.

12 Leave refused.

13 The application is rejected.

(ABHAY M. THIPSAY, J.)