IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.73 OF 2014

Mr. Sanjay Ganpati Todkar & Anr. .. Applicants.

Vs.

Inspector of Police
CBI, Anti Corruption Branch
Pune and Anr. .. Respondents.

Mr.Kuldip T. Pawar with Mr.Ganesh Mohite for the Applicants.
Ms.Rebecca Gonsalvez for Respondent No.1.
Ms.P.N. Dabholkar APP for the State.

CORAM : A. K. MENON, J.

DATED : 5TH JULY, 2017

P.C. :

1. By this revision application the applicants have sought to challenge the order dated 9th January, 2014 passed by the Special Court, Pune. The impugned order is a common order on Exhibits,1, 4 and 7 passed in Special (CBI-ACB) Case No.30/2013 under the Prevention of Corruption Act, 1988 rejecting the discharge applications of accused nos.3 and 4.

2. This revision application has been preferred by the original accused Nos.3 and 4. A bribe of Rs.25,000/- and further demand of Rs.2000/- was allegedly made by accused no.3 to allow the informant to continue his business of booking railway tickets as a private agent. The impugned order records that after complying with the formalities a trap had been laid. Accused no.2 took the informant to accused no.1 who was his superior, who is reported to have asked the informant to handover bribe to accused no.2. Thereafter the CBI team apprehended accused no.2 and is said to have recovered the tainted currency notes from him.

3. The contention of the prosecution was that accused no.1 was taken into custody and at the instance of CBI team accused no.2 contacted the applicants who are accused nos.3 and 4 and informed them about receipt of bribe. The applicants apparently asked accused no.1 to retain the bribe amount with him. The Special Judge took cognizance and had issued process against accused nos.3 and 4 as well. The impugned order directs charges to be framed against all accused.

4. Heard counsel for the parties. Perused the impugned order. The impugned order records that the department has lodged a report against accused no.2 to the effect that in the course of the trap being executed accused no.2 accepted the bribe amount of Rs.25,000/- after coming out of the cabin of accused no.1 and at that time the CBI team apprehended accused no.2

and recovered the tainted currency notes from him and took accused no.1 into custody. The impugned order further records that since the matter is to be decided in the light of Section 239 of the Code of Criminal Procedure the following points are required to be determined :

Points	*Findings*
"(1) Whether there is enough material to frame the charge against the accused ?	*Yes*
(2) Whether taking cognizance of the offences against accused nos.3 and 4 is bad for want of sanction under Section 19(1) of the Prevention of Corruption Act ?	*No.*
(3) Whether accused nos.1, 3 and 4 are liable to be discharged ?	*No.*
(4) What order	*As per final order*

The trial Court found accused nos.1, 3 and 4 are not liable to be discharged. The learned Judge recorded a finding that although accused no.1 was not specifically named in the FIR he was a part of the police staff and entire staff was working under the directions of accused no.3 and demanding bribe and threatened the informant of destroying his business as a railway agent. It was found that the informant was not a licensed agent and therefore he had no vested right to carry on business of booking tickets and the accused persons being RPF personnel were duty bound to prevent such illegal activities.

5. The CBI after making arrangements to lay the trap came with two independent witnesses who were from the Income Tax Office, Akurdi, Pune. They proceeded to the office of the Inspector, RPF, Crime Branch, Pune and after receiving the signal the CBI team rushed towards the Court premises where accused no.2 had gone after accepting the bribe amount. The accused was identified by the informant and the bribe amount was recovered from the inner side of his shirt. The panchnama further discloses that a panch witness has narrated that accused no.2 took the informant in the cabin of accused no1 where accused no.1 asked the informant to handover the bribe amount to accused no.2. Accused no.1 and the informant then remained inside the cabin for some time, while accused no.2 and the informant's companion were asked to go out. Accused no.1 then came out of the cabin and met accused no.2 at the gate of the said office. Accused no.2 allegedly demanded and accepted the bribe amount and proceeded towards the Court building with the bribe amount.

6. The panchnama further discloses that on being instructed by the CBI team, the accused no.2 made a phone call from his mobile phone to the mobile phone of accused nos.3 and 4 and kept phone on speaker mode and accused nos.3 and 4 allegedly agreed and showed willingnesss to accept a bribe and asked accused no.2 to keep the amount to be shared later on. Thus the case against accused nos.3 and 4 was that they agreed to accept the bribe amount on

phone. The impugned order held that the cognizance against accused nos.3 and 4 was taken under Section 190(1)(b) on the basis of final report submitted by the Investigation Officer and not under Section 319 of the Code of Criminal Procedure. The Court found that there is enough material showing involvement of accused nos.3 and 4 and differed with the opinion of the Investigating Officer that there is no evidence against them and accordingly process came to be issued.

7. The impugned order holds that merely because there was some intervening period in the date of taking order of issuing process against accused nos.1 and 2 and accused nos.3 and 4, the matter does not fall under Section 319 of the Code of Criminal Procedure and therefore cognizance was taken under Section 190(1)(b) of the Code of Criminal Procedure. There was no requirement of taking any evidence prior to issuance of such process. The Court held that there were indications that there was a previous conspiracy between accused nos.3 and 4 with accused no.2 to obtain bribe from the informant as otherwise accused nos.3 and 4 would have disassociated themselves and not agreed to share the bribe amount instead of asking him to keep it with him. The Court held that since cognizance of the offence under Section 120-A is punishable under Section 120-B, there is no requirement of previous sanction under Section 19(1) of the Prevention of Corruption Act and that even Section 197 of the Code of Criminal Procedure is not attracted.

8. The order holds that the only link between the provisions of the Prevention of Corruption Act and Section 120-B of the Indian Penal Code is that punishment prescribed under Section 7 of the Prevention of Corruption Act would be attracted in view of such conspiracy under Section 120-B of the Indian Penal Code. Accordingly, the Special Judge found that in the facts and circumstances of the case there was enough material to frame charges for offences punishable under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. Section 120-A punishable under Section 120B of Indian Penal Code against accused nos.1 and 2. Furthermore, there was enough material to frame charges against accused nos.3 and 4 for the offence of criminal conspiracy under Section 120-A punishable under Section 120B read with section 13(2) of the Prevention of Corruption Act. The application for discharge was therefore rejected and charges were thereafter framed.

9. The case proceeded against accused nos.1 and 2 and by the judgment and order dated 31st August, 2016 the accused nos.1 and 2 were both acquitted of the charges against them. Learned counsel for the applicants have today produced before me a copy of the said judgment and order. Perusal of the judgment and order reveals that the complainant had alleged that respondent no.3 had demanded a monthly bribe of Rs.2,000/- and applicant nos.1 and 2 and Head Constable Pise demanded Rs.25,000/- as bribe and threatened the informant that they would destroy his business as a railway ticket agent. After narrating factual aspects, the order records that

the charge-sheet had been filed taking cognizance and issuing summons against accused no.2 and the Court noted that closure report against the applicants was not justified and rejected the application for discharge. That is how the applicants have filed this revision application. In the case against accused nos.1 and 2, CBI examined eight witnesses and finally filed evidence closure purshis and on the same day statements of accused nos.1 and 2 were recorded under Section 313. Thereafter arguments were heard and following points for determination were framed.

Points	Findings
1. Does CBI has proved that on 1/4/2013 accused nos.1 & 2 being the public servants, agreed to accept and accused no.2 accepted for himself and for accused no.1, gratification of Rs.25,000/- from the informant Vinod Bhiku Kale, as a motive or reward for allowing the informant to conduct Railway ticket booking business without requisite license and thereby both accused committed an offence punishable under Section 7 of Prevention of Corruption Act ?	In the negative.
2. Does CBI has proved that on theabove said date accused no.2 committed criminal misconduct by accepting gratification Rs.25,000/- for himself and for other accused no.2 by corrupt and illegal means and by abusing his official position as a public servant and that thereby accused no.2 committed an offence under Section 13(1)(d) read with 13(2) of Prevention of Corruption Act ?	In the negative

3. Does CBI has proved that on the above said date, the accused nos.1 and2 entered into criminal conspiracy with intend to accept illegal gratification from the informant for permitting him to conduct his business of Railway ticket booking without requisite license and thereby committed an offence punishable under Section 120-B of Indian Penal Code ?	In the negative
4. What order	As per final order

10. All the points were answered in the negative after examining the informant P.W.5, panch witnesses PW.6, Trap Laying Officer P.W.7 and Investigating Officer P.W.8. In the ultimate analysis the accused nos.1 and 2 were acquitted and discharged. In the process the Court found that the informant and accused no.2 Mani met for the first time on 1st April, 2013 at Pune railway station after 5.30 pm and the prosecution had not explained how the name of accused Mani came in the FIR which was registered at 11.30 am on 1st April, 2013 and pre-trap panchnama which was prepared prior to 5 pm on 1st April, 2013 could be justified. The finding of the Court is that the FIR and pre-trap panchnama prepared were an after thought as far as accused no.2 was concerned. Furthermore, there were inconsistencies in the evidence of the Investigating Officer and other witnesses P.W.5, P.W.6 and P.W.7 that accused no.2 was caught red handed and the bribe amount was recovered. Accordingly, the judgment records that the facts mentioned in paragraph 26 till 40 of the depositions creates doubt about veracity of the case

and hence accused no.2 was granted benefit of doubt and therefore the Court found that the prosecution had failed to prove point nos.1 and 2 thus leading to the finding. Even as far as point no.3 is concerned, the Court found that there was no evidence that there was conspiracy between accused nos.1 and 2.

11. On the other hand it is stated in the evidence of PW.5 - informant that accused no.1 had informed that the informant and Pujari, namely, present applicant no.2 should sort it out. In the circumstances it is obvious that prosecution has not made any headway and the prosecution failed to get conviction against accused nos.1 and 2 and that being the case, the accused nos.3 and 4 would also be entitled to claim benefit of doubt. However, it is to be noted that the closure report, as originally filed, was set aside.

12. In the present case the closure report had been ordered on the basis of lack of evidence, however, the Sessions Judge found that the closure report was not appropriate especially in view of the fact that there was strong prima facie case made out in respect of other accused and the conversation between the present applicants and other accused during which the present applicants are alleged to have shown willingness to accept the bribe. However, as it turns out that the main accused have been acquitted. The credibility of the witnesses was found to be questionable and the evidence was found to be unreliable. In my view in view of acquittal of main accused, it would not be appropriate to proceed with the trial against the applicants. In the case of *Ram*

Laxman Vs. State of Rajasthan (2016) 12 SCC 389 it has been held that if the evidence is found to be undependable the different treatment of co-accused based on such testimony will not be appropriate. The evidence cannot be split to grant benefit of the same to some and acquit them and accept the testimony in relation to the others.

13. On the grounds of parity as well, there will be no justification in the present case to maintain prosecution against the present applicants who are alleged to have asked accused no.2 to keep the bribe amount to be shared later on. In the circumstances the revision applicants are entitled to succeed. Hence, I pass the following order :

(i) Revision application is allowed.

(ii) The impugned judgment dated 9th January, 2014 passed in Criminal Special (CBI-ACB) Case No.30/2013 is quashed and set aside.

(iii) The applicants are discharged.

(A.K. MENON, J.)