IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 117 OF 2016
(FOR LEAVE TO APPEAL)
IN
WRIT PETITION NO. OF

The State of Maharashtra ....Applicant
(Orig. Complainant)

V/s.

Smt. Sunita Suryakant Waydande ....Respondent
(Orig. Accused)

* * * * *

Mr. J.P. Yagnik, APP for the appellant, State.

Mr. Mukesh Modi, Advocate for respondent no.1.

CORAM :- SANDEEP K. SHINDE, J.

DATE :- 21ST NOVEMBER, 2017.

P.C. :-

1. The State seeks leave to appeal against the order of acquittal passed in A.C.B. Special Case No. 44 of 2014 passed by the Learned Special Judge, Prevention of Corruption Act, Mumbai on 16th June, 2016 whereby the

respondent, original accused was acquitted of the offences punishable under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Yagnik, Learned APP for the State and Mr. Modi for the respondent, accused.

3. At the relevant point of time, the appellant was a Sales Tax Officer, a public servant. She was the Assessing Officer of the complainant's proprietory firm, M/s. Ravindra Steel. It is alleged that, for completing the assessment proceedings for the year 2008-09, the accussed demanded money (gratification) from the complainant as reward for doing favourable tax assessment order, in discharge of her official function. This fact was informed by the complainant, P.W.2 whereupon FIR was registered on 30th April, 2013. On the given date, the complainant, P.W.2 visited the office of the respondent, accused alongwith P.W.3, a panch witness who is working with the State Transport Department,

Mumbai. It is the prosecution's case that, the respondent demanded money from the complainant in the presence of P.W.3, a panch. The money was paid to the respondent, accused. It was recovered from her custody. It appears from the evidence of P.W.3, the hands of the accused were examined in ultraviolet lamp and greenish glaze was noticed on her both hands. The file in which the tainted money was kept was also found with the traces of anthracene powder.

4. The evidence of the complainant has been corroborated by the evidence of P.W.2 on the material facts of demand and acceptance.

5. It is the defence of the accused that, under a mistaken belief, she had accepted the amount from the complainant towards part consideration for the sale of motorcycle of her daughter which she had agreed to sell to one, Dharmik who incidentally happens to be the accountant of the complainant. That as such, the

acceptance of tainted money is not in dispute.

6. The Learned Counsel for the respondent, has argued that the business premises of the complainant were raided by the Enforcement Department of Sales Tax in February, 2009. He would contend that, the complainant and others tried to overpower and manhandle the Sales Tax Officer which resulted into crime being registered against the complainant herein and the Sessions Case is pending against him. He would further contend that, though the accused had examined herself and given a clear account of the amount received by her from the complainant, which was believed and accepted by the trial Court and as such no interference is called for. He would therefore submit that, leave may not be granted.

7. I have gone through the evidence of P.W.2, the complainant and evidence of P.W.3, a panch witness. The evidence of P.W.2 is corroborated on material terms and

facts on the point of demand and acceptance. I see no reason to disbelieve the evidence on these two facts in issue i.e. demand and acceptance.

8. The trial Court while appreciating the evidence of these two witnesses appears to have taken into consideration, the incident which had taken place in February, 2009 wherein the complainant herein has been charged for manhandling and overpowering the Sales Tax Officer who had gone to his business premises for search and seizure. On this count, the Learned trial Judge has observed “Here considering the facts and circumstances of the present case and facts which are brought on record regarding the form and other procedure which the parties are required to be followed during the process of assessment and considering the incident of lodging criminal case against the informant and his family members regarding the incident about assessment of the year 2008-2009 and the criminal case which is pending in

Sessions Court at Bombay, I hold that he would fall within the category of 'accomplice' and as per the principles laid down in the various authorities from time to time by the Hon'ble Apex Court, it is expected that the evidence of informant should have strong, independent and corroborative and evidence of informant is also expected to be considered with great care and caution. Therefore, I hold it proper to consider the independent evidence on record."

9. In my view, the Learned trial Judge has misread the evidence of P.W.2 and P.W.4. It is very difficult to accept the reasoning of the Learned trial Judge, inter-alia, holding and branding the complainant as an "accomplice", and thereby refusing to look into the evidence of the complainant though it was corroborated on the material facts by P.W.3.

10. Considering the facts of the case, leave is granted. The appeal is admitted. Mr. Modi, waives notice

for the respondent, accused.

11. Pending the Appeal, Clause-3 of the impugned judgment is hereby stayed.

12. Call for Records and proceedings.

(SANDEEP K. SHINDE, J)