

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 22 OF 2016**

Mr. Shrikant Rajaram Sarmokdam,
Age : 59 years, Occu. Service,
R/at: Flat No. 102, Beauty Palm Co-op.
Housing Society Limited,
Opp. Pratap Talkies, Khopat,
Thane (West).

....Applicant

Vs.

The State of Maharashtra,
(At the instance of Senior Inspector
of Police, Shil Diaghar Police Station).

....Respondent.

WITH

CRIMINAL APPLICATION NO. 263 OF 2017

IN

CRIMINAL REVISION APPLICATION NO. 22 OF 2016

The State of Maharashtra,
(At the instance of Senior Inspector
of Police, Shil Diaghar Police Station)

...Applicant

Vs.

Mr. Shrikant Rajaram Sarmokdam

....Respondent.

WITH

CRIMINAL APPLICATION NO. 264 OF 2017

IN

CRIMINAL REVISION APPLICATION NO. 22 OF 2016

The State of Maharashtra,
(At the instance of Senior Inspector
of Police, Shil Diaghar Police Station)

...Applicant

Vs.

Mr. Shrikant Rajaram Sarmokdam
Age : 57 years, Occu. Service,
Residing at Flat No. 102, Beauty Palm
Co-operative Housing Society Ltd.,
Opp. Pratap Talkies, Khopat,
Thane (West).

....Respondent.

WITH

CRIMINAL REVISION APPLICATION NO. 595 OF 2015

Hira Sitaram Patil,
Adult Indian Inhabitant,
Residing at Om Kiran, Opp- Bharat
Gears, Khardi Road, Thane.

....Applicant

Vs.

The State of Maharashtra

....Respondent.

Mr. A.P. Mundargi, Senior Advocate a/w Mr. K.S. Patil, Ms. Saili Dhuru, Ms. Megha Bajoria for the Applicant in Revision Application No. 22 of 2016.

Mr. Girish Kulkarni, a/w Karan Kadam for the Applicant in Revision Application No. 595 of 2015.

Mr. Shishir Hiray, Sepcial P.P. along with Mr. Arfan Sait, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

JUDGMENT RESERVED ON : 23RD AUGUST, 2018.

JUDGMENT PRONOUNCED ON : 11TH SEPTEMBER, 2018.

JUDGMENT:-

By the present Revision Applications, the Applicants have impugned Orders passed by 2nd Additional Sessions Judge, Thane below Exhibit-178 dated 30th November 2015 and below Exhibit 228

dated 30th November 2015 respectively, thereby, rejecting their Applications for discharge under Section 227 of the Code of Criminal Procedure in Special Case No. 17 of 2013 arising out of C.R. No. I-63 of 2013.

2 Heard Mr. Mundargi, the learned Senior Counsel appearing for the Applicant – Mr. Shrikant R. Sarmokdam in Revision Application No. 22 of 2016 and Mr. Girish Kulkarni, the learned Counsel appearing for the Applicant – Mr. Hira S. Patil in Revision Application No. 595 of 2015.

3 The Applicant in Revision Application No. 22 of 2016, is accused No.22 and the Applicant in Revision Application No. 595 of 2015, is accused No.6 in CR No. I-63 of 2013 registered with Shil Diaghar Police Station, District Thane dated 4th April, 2013 under Sections 109, 119, 304, 308, 336, 337, 338, 420, 427, 465, 467, 468, 471 and 34 read with Section 120-B of the Indian Penal Code and under Section 13(1)(d) of the Prevention of Corruption Act.

The Applicant – Mr. Shrikant R. Sarmokdam is working as a Deputy Commissioner with Thane Municipal Corporation and the Applicant – Mr. Hira Patil was a Corporator of the concerned ward wherein, the incident in question has taken place.

4 The prosecution case in brief is that, on 4th April, 2013 at about 5.00 p.m. a seven storied building known as “Adarsh-'B', which was being constructed in Lucky Compound on City Survey No. 98 (1) (b) situated at Shil Diaghar collapsed. The said building was being constructed by accused Nos. 1 and 2. The said building collapsed within a period of about four months from the date of its construction. That, in the said incident 76 human beings lost their lives and 64 persons received serious to grievous injuries.

 It is the further prosecution case that, the principal accused Nos. 1 and 2 hatched a conspiracy with the other accused persons and erected the said unauthorized construction of seven storied building with extremely low/poor quality materials and in a hurried manner, without taking any necessary permission or care and managed to complete the construction of the said building within three months.

 It is alleged that, the Applicant – Mr. Shrikant Sarmokdam being a Deputy Commissioner of the concerned zone, for not taking any action against the said illegal construction, accepted illegal gratification from Jamil Ahmed Shaikh (Accused-2) in furtherance of the said conspiracy.

It is alleged that, the Applicant Mr. Hira Patil was a Corporator of the said ward wherein, the said building was being constructed and he, with a view to favour the principal accused and for not lodging any complaint against unauthorized construction with the Municipal Corporation, extracted an amount of Rs.4,03,000/- from time to time and through his associate Mr. Afhan Raut (Accused-26) from the builder (Accused No.2).

The police, after completion of investigation, submitted charge-sheet in the case and the said case is culminated into Special Case No. 17 of 2013.

5 The Applicants, thereafter, preferred the afore-stated Applications below Exhibit Nos. 178 and 228 respectively under Section 227 of the Code of Criminal Procedure for their discharge, which have been rejected by the Trial Court by the impugned Orders dated 30th November, 2015.

6 Mr. Mundargi, the learned Senior Counsel appearing for the Applicant – Mr. Shrikant Sarmokdam submitted that, on the date of incident i.e. on 4th April, 2013, the Applicant was not in-charge of the concerned zone i.e. zone No.1 and as a matter of fact, he was transferred from the concerned zone on 24th June 2012 and therefore,

he has no direct concern for either taking or not taking action against the alleged illegal structure. He further submitted that, the said illegal structure was earlier demolished on 10th November 2012 under the supervision of an Officer Mr. Godbole. He submitted that, though in the search of premises of the office of Mr. Jamil Shaikh (Accused-2), the builder of the said building, a diary was found with an entry 'Sarmokdam-50,000/-', there is no evidence on record to connect the Applicant that, for not taking any action, the said amount was paid to the Applicant. He submitted that, as a matter of fact, the Applicant is denying such receipt of any payment. He further submitted that, except some witnesses in their statements have stated that, some of the people used to come at site in cars with having yellow and red beacons and were found sitting in the building premises, there is no other material to connect the Applicant with the present crime. He, therefore, submitted that the present Revision may be allowed and the Applicant may be discharged from the case.

7 Mr. Kulkarni, the learned counsel appearing for the Applicant – Mr. Hira Patil submitted that, the impugned Order passed by the Trial Court is a cryptic order, without any detailed reasoning thereto. He further submitted that, the entry in the diary of Jamil

Shaikh (Accused-2) is not admissible under Section 34 of the Indian Evidence Act, 1872, as against the Applicant, though his name is mentioned therein. He submitted that, the alleged note-books seized from the office of Jamil Shaikh (Accused-2) are not maintained in regular course of business and requires reliability to make a foundation of the police investigation. He further submitted that, the entries in the alleged diary/note-books mentions that, through Mr. Afhan Raut, the said money is forwarded to the Applicant and therefore, the Applicant has no direct concern with the transaction, being a third party. In support of his contention, he relied upon a decision of the Supreme Court in case of *Common Cause (A Registered Society) & Ors. Vs. Union of India*, reported in MANU/SC/0052/2017 : AIR 2017 SC 540. He, therefore, prayed that, the present Revision Application may be allowed and the Applicant may be discharged from the offences.

8 The evidence on record indicates that, the witnesses have stated that, some Government Officers used to come to the site of Jamil Shaikh (Accused No.2) in cars having yellow and red beacons and they used to tell Jamil Shaikh (Accused- 2) to expedite the work of construction. Witness Mohammed Sagir Idris Anshari (Raju

Ansari) has stated that, he knows various officers from the Thane Municipal Corporation and in the year 2012 at the request of Jamil Shaikh, he introduced Applicant- Shrikant Sarmokdam, the Deputy Commissioner of Thane Municipal Corporation with Jamil Shaikh at Mumbra. The record clearly indicates that, though the Applicant Shrikant Sarmokdam was transferred from Zone-1 of Thane Municipal Corporation on 24th June, 2012, he was holding additional charge of the said area from 15th September 2012 to 28th September, 2012. That, the Applicant, have held an additional charge of the said Zone intermittently and has clearly failed in taking legal action against the illegal construction of Jamil Shaikh (Accused-2). The evidence on record further indicates that, on a particular day, there was some telephonic communication between the Applicant Shrikant Sarmokdam and Jamil Shaikh (Accused-2) and the mobile tower location of both the persons is one and the same, located at Kausa, Mumbra.

9 That, during the course of investigation, the premises of Jamil Shaikh was searched by the Investigating Agency and four duly bound note-books were seized from his office. The said note-books are running Account Ledgers of Jamil Shaikh wherein, there is an

entry of payment of Rs.50,000/- to the Applicant Mr. Shrikant Sarmokdam. It *prima facie* appears that, the Applicant Mr. Shrikant Sarmokdam for doing undue favour of the said co-accused Jamil Shaikh, has accepted the said amount as illegal gratification otherwise than a legal remuneration thereby clearly attracting the provisions of the Prevention of Corruption Act.

10 As far as the Applicant Mr. Hira Patil is concerned, he was a Corporator of the said ward, where the incident took place. During the search of his office premises, the Investigating Agency found certain complaints made by the residents of that ward, pertaining to the illegal construction of the buildings which were being carried out in the locality. It is the prosecution case that, by using those complaints as a tool of extortion, the Applicant has extracted an amount of Rs.4,03,000/- from Jamil Shaikh (Accused-2).

11 I have personally perused the said note-books seized by the Investigating Agency.

It is to be noted here that, the said duly bound four note-books, are in fact, Books of Accounts of Jamil Shaikh (Accused-2) and the same were maintained in normal course of business having various names mentioned serially with dates therein. Those are not loose

papers/sheets. *Prima facie*, it appears that, the said books of Accounts are maintained in regular course of business of Jamil Shaikh (Accused-2) and those are admissible as evidence under Section 34 of the Indian Evidence Act and therefore, the contention of the learned counsel for the Applicant-Mr. Hira Patil, to that effect, cannot be accepted.

There are various entries by name Hira Patil in it and at one place, it is stated that 'Afhan Raut–Hira Patil'. It is the prosecution case that, the said Mr. Afhan Raut is an associate of Mr. Hira Patil and he, on behalf of Mr. Hira Patil, collected the money.

12 After taking into consideration the evidence available on record, this Court is of the considered view that, there is more than sufficient material to proceed against the Applicants to frame charge under Section 228 of the Code of Criminal Procedure and the Trial Court has not committed any error either in law and/or on facts, while passing the impugned Order. The Revision Applications being devoid of merits are required to be dismissed.

13 It is to be noted here that, the co-accused Mr. Subhash Waghmare had preferred a Writ Petition No. 645 of 2016 before this Court, against the Order of rejection of his Application for his

discharge. This Court, in its Order dated 4th April, 2017 has observed that, the trial pertaining to the present case has already commenced and the prosecution is in process of recording substantive evidence of the witnesses and in view thereof, the Petition was dismissed as infructuous.

The record further indicates that, in the present Applications on 6th August, 2018, this Court had noted the submission of the learned Special P.P. that the prosecution till that date had examined 19 witnesses.

14 In view of the above, the learned 2nd Additional Sessions Judge, seized of Special Case No.17 of 2013 is hereby directed to expedite the hearing of the said trial and to conduct it on day-to-day basis and conclude the same within a period of one year from today.

15 Revision Applications are dismissed with aforesaid directions.

16 In view of dismissal of the Revision Application No. 22 of 2016, Criminal Application Nos.263 of 2017 and 264 of 2017 do not survive and the same are accordingly disposed off.

(A.S. GADKARI, J.)

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