

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.325 OF 2018

Satyanarayana Vanam

.. Applicant

Vs.

CBI ACB, Mumbai & Anr.

.. Respondents

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Mr.Karl Rustomkhan, Bhavesh Thakur i/b. Mr.Rahul Arote, Advocate
for the Applicant.

Ms.Ameeta Kuttikrishnan, Advocate for Respondent No.1.

Mr.Y.M. Nakhwa, , APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : JULY 25, 2018.

P.C. :

Applicant is prosecuted for the offences punishable under Section 120-B of IPC and Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The proceedings are pending before the Special Court vide Special Case No.116 of 2013. Trial has commenced and evidence of witnesses was recorded. Learned counsel for the respondent-CBI submitted that P.W.4 (investigating officer) is under cross-examination.

2 Evidence of P.W.3 had commenced on 28th February, 2018 and completed on 5th May, 2018. The said witness is the panch

witness of pre-trap and post-trap panchanama. When the witness started deposing as to what the complainant has stated to him regarding the complaint, the advocate for the applicant raised objection that there was a statement during the investigation and as such it is hit by Section 162 of Criminal Procedure Code. The witness is deposing about the disclosure made to him by the complainant and he is not deposing about any statement made by the investigating officer. The Court opined that the narration to panch witness by the complainant is not hit by Section 162 of Criminal Procedure Code. Thus, the objections raised by the applicant was overruled. Learned counsel appearing for the applicant-accused sought adjournment to challenge the order overruling objection. The trial Court was pleased to adjourn the matter to the next date. However, thereafter, further evidence of P.W.3 was recorded. The learned counsel for the applicant submits that the evidence reflected in paragraph no.3 of his evidence, is not admissible in view of the objections raised by the advocate for the accused. The said deposition reads as follows:

“3

Thereafter, Gosain asked the complainant as to what conversation had taken place with the accused and the complainant told that the accused had told him that for not raising any query regarding income tax of the complainant, the complainant will have to pay Rs.50,000/- to him. The complainant further told us that he had told the accused that it was not possible for him to give that

much money. The complainant further told us that thereafter, the accused had told him that he does not talk with the customers directly and he will talk to the consultant of the complainant regarding how much money is to be paid."

3 It is further submitted that the evidence of P.W.4 was also recorded subsequently and the deposition in paragraph 5 of the evidence is also objectionable and the same is not admissible in evidence being hit by Section 162 of Criminal Procedure Code. However, the accused did not raise any objection while recording the said evidence. The relevant part of the evidence of respondent no.4 read as follows:

"4....

The complainant told that the accused no.1 had asked him as to how much amount, he can give. The complainant told us that he told accused no.1 that he was a poor man and he cannot arrange that much amount and the accused no.1 had told him that he will inform the accused no.2 as to how much amount, he was to give. The complainant also informed us that the accused no.1 had told him that they do not talk to the clients personally and the bribe transactions taken place through the tax consultant and chartered accountants.

8.....

On being asked, the complainant told that when he went to office of accused no.2, an employee of the accused no.2

was present in the office and that employee had told him that accused no.2 was not in the office. That employee had also told that the accused no.2 had gone to offer namaaz and he was not coming to office thereafter. That employee also told the complainant that the accused no.2 will be available in the office till 01.00 p.m. on the next day. The complainant had returned without giving money.

15 Thereafter, I asked the complainant as to what had happened when he went to the office of Mehboob shaikh and he told that he had told the accused Mehboob Shaikh that he had brought rs.20,000/- and accused Mehboob Shaikh had asked him to make a phone call to Satyanarayan Vanam from his mobile phone. The complainant further narrated that while making a phone call to accused Satyanarayan Vanam, he gave the tainted amount to accused Mehboob Shaikh on his demand, accused Mehboob Shaikh accepted that money by his right hand and by his left hand, he had kept that money in the left side drawer of his table. The complainant further narrated that when Satyanarayan Vanam accepted the call, accused Mehboob Shaikh took his mobile phone and informed Satyanarayan Vanam that Rs.20,000 were received and remaining amount of Rs.20,000/- would be received after Moharram. The complainant further narrated that after conversation, he came out the building and gave pre-decided singal."

4 Even in respect of this evidence, the accused did not object while recording the said deposition.

5 It is submitted by the learned counsel for the applicant that in view of the rejection of objection raised earlier, the accused did not raise further objection. However, it is submitted that even said evidence is hit by Section 162 of Criminal Procedure Code.

6 Learned counsel for respondent-CBI submitted that the trial is almost over and the investigation officer is under cross-examination. She relied upon the judgment of the Supreme Court in the case of ***Bipin Shantilal Panchal Vs. State of Gujarat & Anr***¹. It is submitted that the issue relating to the objections raised by the applicant can be kept open for deciding the same at the time of conclusion of the trial.

7 The objections raised by the advocate for the applicant while recording the evidence of P.W.3 on 20th February, 2018, was overruled by the trial Court by observing that the deposition is not hit by Section 162 of Criminal Procedure Code. The other evidence, as contended by the applicant, was not objected. However, taking into consideration the grounds raised by the applicant and in the light of the fact that trial is getting over, and in pursuant to objection being overruled, the trial Court had proceeded to record the evidence of P.W.Nos.3 and 4. It would be appropriate for the trial Court to decide these objections and consider the issue with regard to admissibility of

1 (2001) 3 SCC 1

the said evidence at the conclusion of trial. The trial Court shall decide the said issue without considering the fact that by order dated 20th February, 2018, the objection raised by the applicant is overruled.

8 With these observations, Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)