

Vidya Amin.

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

CRIMINAL APPLICATION NO. 1436 OF 2018

Rajesh Rajendra Bijja ... Applicant
VS.
The State of Maharashtra & Anr. ... Respondents

Mr. Bhavesh M. Thakur, Advocate for the applicant.
Ms. Pallavi N. Dabolkar, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 14th December, 2018**

P.C. :

This Application is moved by the applicant against the order dated 30th November, 2018 below Exhibit 58 passed by the learned Sessions Judge in Special Case no. 51 of 2015.

2. The applicant/accused, who is facing charges under section 8 of Prevention of Corruption Act. 1988, has made grievance that the contents of the complaint were recorded through Investigating officer and the objection taken for the same is turned down by the learned Sessions Judge.

3. The learned counsel for the applicant submitted that complainant in ACB Spl. Case No. 51 of 2015 is examined as

PW-2. He has not turned hostile. Investigating officer is PW-11. During the course of recording his evidence on 30th October, 2018, he started deposing about the contents in the FIR. It was objected by the defence counsel that Investigating officer cannot depose about the contents of the complaint. Learned APP took objection to the said objection. The learned Judge without considering the bar under section 162 of Cr.P.C. has overruled the said objection. The learned counsel has pointed out in paragraph 2 of the evidence, which was recorded on 30th November, 2018.

4. The learned APP has submitted that the order passed by the learned Sessions Judge is legal and correct and Investigating officer deposing about the contents of the FIR is admissible and not hit by Section 162 of Cr.P.C.

5. Investigating officer is supposed to state the facts which took place before him, i.e., FIR is given by the person and FIR is recorded ad-verbatim and he should identify the FIR and the signatures below. It is the complainant who has to prove the contents of the complaint. If the complainant has proved the said contents, the Investigating officer cannot depose about the

contents of the complaint because Investigating officer is not the person who has witnessed the incident and therefore the objection taken was correct. The contents of the complaint which is deposed by the Investigating officer are inadmissible and not to be read in evidence.

6. Criminal Application is disposed of.

(MRIDULA BHATKAR, J.)