

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

CRIMINAL APPLICATION NO. 1506 OF 2018

Suhash Shankar Waghmare

...Applicant

Versus

State of Maharashtra

...Respondents

Mr. Satyavrat Joshi a/w. Mr. Nitesh Mohite for Applicant.

Ms. Ameeta Kuttikrishnan for Respondent No. 1.

Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 26th AUGUST 2019

P.C.:

1. Heard learned counsel appearing for Applicant and learned counsel appearing for Respondent. Learned counsel appearing for the Applicant submits that, except the statement of co-accused Ramesh Gaikwad, there is no other evidence collected by Respondents during the course of investigation. He submits that, in charge sheet and accompaniments of charge sheet, except the statements of Ramdas Mate and others, there is no other evidence collected by the Respondents, showing direct or indirect involvement of the Applicant. Learned counsel in support of his contention that, the statement of co-accused is not admissible in the evidence, placed reliance on the

judgments of the Apex Court in the case of Suresh Budharmal Kalani alias Pappu Kalani Vs. State of Maharashtra¹, Laxmi Koli Babita Vs. State of Maharashtra² and Kashmira Singh Vs. The State of M.P.³.

2. At the cost of repetition, learned counsel appearing for the Applicant submits that, said Ramdas Mate on whose statement heavy reliance has been placed by Respondents has named the Ramesh Gaikwad who stated to said Ramdas Mate that, the amount of Rs. 4,00,000/- (in words Rupees Four Lakhs Only), which will be accepted by him, will be given to the Applicant so as to secure the appointment of Grade-C post. It is submitted that, it is easy for co-accused to name any officer. It is submitted that, there is no any other material connecting the Applicant. Learned counsel appearing for the Applicant relying upon the averments in the application, annexures thereto submits that, application deserves to be allowed.

3. On the other hand, learned counsel appearing for the Respondents relying upon the averments in the affidavit in reply and

1 1999 ALL MR (Cri) 95

2 2005 ALL MR (Cri) 571

3 AIR 1952 SC 159.

reasons assigned by the Special Court in the impugned order submits that, there is a statement of Ramdas Mate and also other witnesses who have stated that, Ramesh Gaikwad collected the money so as to give it to the Applicant to secure appointment of Grade-C post. It is submitted that, sufficient material has been collected by the investigating agency and on the basis of said material charge can be framed and the trial can proceed further.

4. Upon appreciating rival contentions and careful perusal of the statement of Ramdas Mate, who is father of victim and also other witnesses who have stated that, the said Ramesh Gaikwad has collected Rs. 4,00,000/- (in words Rupees Four Lakhs Only) from each candidate so as to give it to the present Applicant to secure appointment of Grade-C post and present Applicant will give it to Col. Kulbir Singh. It is true that, only on the basis of statement of co-accused, it may be difficult for the prosecuting agency to prove the case against the applicant. However, in the present case there are witnesses who have given statement under Section 161 of Code of Criminal Procedure and therefore, their statements will have to be tested during the course of trial. Apart from the provisions of

Prevention of Corruption Act, the prosecution has also invoked Section 120B of Indian Penal Code. Generally conspiracies are hatched in secrecy and unless an opportunity is given to the prosecution to lead circumstantial evidence to prove such conspiracy, it may not be proper to accede to the prayer of the applicant. In that view of the matter and keeping in view the reasons assigned by the Special Court in the impugned order, this Court is not inclined to entertain this application. Hence, criminal application stands rejected.

5. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present criminal application only.

(S.S. SHINDE, J.)