IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPA NO. 89 OF 2020

The State of Maharashtra, thr. The Dy. Superintendent of Police
..vs..
Sou. Sulochana Surendra Nighade and anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.D. Sirpurkar, A.P.P. for the appellant.
Shri M.P. Khajanchi, Advocate for respondent no.1.
Shri A.N. Ansari, Advocate for respondent no. 2.

CORAM : VINAY JOSHI, J.
DATED : 03/12/2020

Heard.

2. Both respondents were charged for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for Short "the P.C. Act, 1988). On full fledged trial the learned Sessions Judge held that the prosecution failed to establish levelled charges in consequence acquitted both. Section 378(1)(b) of the Code of Criminal Procedure made a provisions of appeal to the High Court from the order of acquittal, however it has a rider of compliance of Section 378 (3) of the Code of Criminal Procedure which mandates to obtain leave of the High Court for preferring said appeal.

3. In view of that, the State government while challenging the order of conviction has sought the leave of this Court. The respondents have strongly resisted the prayer for grant of leave which is the subject matter for adjudication.

It is the prosecution case that, the original informant was in need of solvency certificate for business purpose. In that connection, he met respondent no. 1 (accused no. 1) who was working as Tahsildar at Mul. At relevant time, the respondent no. 2 (accused no. 2) was working as a Clerk in Tahsil Office, Mul.

4. On 27.08.2003, when initially, the informant met to accused no. 1 for the purpose of getting solvency certificate, the later has demanded bribe of Rs.300/- for issuance of solvency certificate and asked to comply accordingly on 29.08.2003. Since informant was busy in other work on 29.08.2003, he sent his employee namely Pramod Shende to Tahsil Office where the demand was repeated. On 30.08.2003, informant, personally, went to Tahsil Office and met accused no. 1 who reiterated the demand of Rs.300/-. Since the informant was not intending to pay bribe, he approached the office of Anti Corruption of Bureau and lodged the report. The trap was arranged on the very day. In presence of Panch Witnesses the trap party has seized tented currency notes from the register kept on the table of accused no. 2.

5. On trial, the prosecution has examined P.W.1- Anil Mogre i.e. Informant, P.W.2- Gayatri Sonkusare who is shadow panch and P.W.3 – P.I. Jabbar Khan who was the Investigating Officer. On appreciation of evidence, the Trial Court held that, the prosecution has failed to establish demand which was the essential requisite in trap cases and accordingly, acquitted the accused.

6. Learned Counsel for the respondents strongly supported the judgment of acquittal. It is his submission

that, the prosecution has measurably failed to establish the demand of bribe amount and therefore, the judgment of acquittal is flawless. He took me through the certain portion of evidence as well as judgment to substantiate his stand. He would submit that the accused no. 1 was already retired in the year 2015. Both the accused have under gone the ordeal of facing trial for near-about 14 years and therefore, the aspect of grant of leave shall be considered with all seriousness. He has also reminded the settled principle of Law laid down in various judgments on the point of appreciation of evidence in the appeal against acquittal. Per contra, learned A.P.P. has submitted that there is sufficient material to indicate the prior demand and acceptance of bribe on the spot. According to him, Phenolphthalein powder was found on the fingers of accused no. 2 which supports the prosecution case. It is his submission that, in order to find out adequacy of proof it requires to scan entire evidence which cannot be done at the time of deciding the aspect of leave. Therefore, he prayed for grant of leave to appeal.

7. At the inception, one must understand the intention behind introducing the concept of leave to appeal, especially when the appeal is filed in the High Court. The presumption of innocence which is attached to every accused gets fortified and strengthen when the accused is acquitted by the Trial Court. Probably, due to this reason the appeal to the High Court should not be filed as a matter of course or as a matter of right, but leave of the High Court must be obtained before the appeal is entertained. It is a one type of filter placed by legislation so as to weed-out the merit-less proceedings which would

ensure that the innocent persons who have already suffered would not be troubled furthermore. In view of that, the merits of the case are required to be scan to some extent to find out whether it is worthy to proceed further by grant of leave or to close the chapter.

8. It is the evidence of P.W.1-Informant that, initially on 27.08.2003, he met accused no. 1-Tahsildar for obtaining solvency certificate who in turn asked him to meet on 29.08.2003 and should also pay a bribe of Rs.300/-. He deposed that on 29.08.2003 his employee-Pramod Shende went to Tahsil Office where the accused no. 2 (Clerk) had asked for the bribe amount. The informant further stated that on 30.08.2003, he went to Tahsil Office where the accused no. 2 (Clerk) asked him to pay Rs.300/-.

9. On actual trap, the informant stated that, at the time of trap i.e. on 30.08.2003 he went to Tahsil Office and stated to accused no. 1 (Tahsildar) that he had brought the bribe amount as demanded on which the accused no. 1 by gesture asked him to pay to accused no. 2 (Clerk) thereafter, he offered bribe money to accused no. 2 on which he had not accepted, but asked to keep the amount on his table. Later on, the trap party arrived on signal and seized the amount kept in one register. P.W.2-Shadow Panch – Smt. Gayatri Sonkusare has corroborated the evidence as laid by the informant.

10. Learned Trial Judge held that, the prosecution has not established the demand. Pertinent to note that, as per prosecution case, initial, demand was on 27.08.2003, however, no complaint was lodged. According to the

prosecution, the demand was repeated to informant's employee - Pramod Shende on 29.08.2003, however, he was not examined. The demand on the spot always assumes significance. In that regard, the evidence on either informant or panch never says that on 30.08.2003 either of the accused has raised monitory demand. All along it is the evidence that, 30.08.2003, when the informant met to accused, she said nothing, but the informant at his own said that, he has brought Rs.300/- for which she asked to met the accused no. 2. It is the evidence that, trap party has specifically instructed the informant that he should not pay or offer the bribe unless demanded. The evidence as it stands no where discloses that there was monitory demand at the time of raid.

11. Learned Counsel for the respondents would submit that in trap cases, prior demand is an essential ingredient to prove the offence. To buttress said submission, he relied on the decisions of the Hon'ble Supreme Court in the cases of ***V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150*** *A*nd ***Satvir Singh vs. Stage of Delhi reported in (2014) 13 SCC 143***. In these cases well settled proposition has been reiterated that the prosecution is burdened with to prove the demand of bribe and mere recovery of money is not enough to bring the statutory presumption under Section 20 of the P.C. Act, 1988. Moreover, in catena of decisions, it is observed that the demand of illegal gratification is *sine qua non* for constituting an offence under the P.C. Act, 1988. In that regard on mere look of the evidence of prosecution witnesses, it reveals that there is no material to construe

that there was monitory demand at the hands of accused. The learned Trial Judge has rightly considered the said aspect in paragraph 11, 12 and 13 of it's judgment and also considered the worth of admissions given in cross-examination.

12 Learned Counsel for the respondent has submitted that while exercising the appellate jurisdiction in case of appeal against acquittal, the Court shall be mindful of the fact that unless there is perversity, the order of conviction cannot be revert. In this regard, he relied on the decision of the Hon'ble Supreme Court in case of ***Mohd. Akhtar Alias Kari and ors vs. State of Bihar and anr. reported in (2019) 2 SCC 513*** particularly, he attracted my attention to paragraph 17 of the judgment wherein, the principles of appreciation in like cases has been reiterated. It is settled law that the Court in appeal can not reverse an order of acquittal on the matter of fact, except in cases in which the lower Court has obstinately blundered or misread the evidence or recorded a perverse finding. Merely because, another view is possible, the Appellate Court could not reverse the finding of acquittal. On reading the impugned judgment in context to the evidence laid by the prosecution witnesses, it is clear that the view expressed by the Trial Court is a reasonable view of the facts of the case, it cannot be said that the conclusions reached by the Trial Court are palpably wrong or based on erroneous view of the Law or fact.

13. Learned Counsel for the respondent by placing reliance on the decisions of the Hon'ble Supreme Court in case of ***State of Rajasthan vs. Ram Niwas reported in***

(2010) 15 SCC 463 has submitted that at the time of deciding the aspect of grant of leave, the Court has to keep in mind the principles applicable for dealing the appeal against acquittal. As noted above, bare perusal of the evidence, it reveals that the aspect of demand of bribe has not been established by the prosecution. The Trial Court has rightly appreciated the said aspect in proper perspective. Unless, there are sufficient reasons, the Court shall not grant a leave even on looking the matter from the view point of preliminary hearing. It is apparent that, there is no worth in continuing the proceeding in appeal. Rather it was the legislative intention to cut shot unmeritorious litigation and therefore, the provisions of grant of leave has been incorporated in the statutes books. Already the respondents have faced a trial which was run into decade. There is no purpose in again requiring the respondents to face the litigation for next few years especially when the First Court on sound reasons recorded the finding of acquittal. In short, the Trial Court has considered the evidence in the right perspective and appreciation of evidence cannot be held to be faulty, perverse or arbitrary therefore, there is no merit in continuing the proceedings by granting leave to the State to proceed with the Appeal. In view of that, leave to appeal as sought by the prosecution under Section 378(3) of the Code of Criminal Procedure stands refused and proceeding is hereby terminated and consequentially appeal is disposed of.

JUDGE

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