

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 368/2020.

Central Bureau of Investigation.

-VERSUS-

Hemant Bhojraj Suryawanshi

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms. M. Chandurkar, Advocate for the Applicant/Appellant.
Shri R.B. Upadhye, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : JANUARY 07, 2021.

Heard.

2. The appellant – Central Bureau of Investigation (CBI) is seeking leave to prefer appeal in terms of Section 378[3] of the Code of Criminal Procedure for challenging the order of acquittal passed by the Special Judge in Special CBI Case No. 1/2015. The respondent / accused was charged for the offence punishable under Sections 7, 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988. After full fledged trial, the Special Court held that the prosecution has failed to establish the charged offences which resulted into acquittal.

2

3. Learned Counsel appearing for the applicant / appellant vehemently criticized the judgment of acquittal by making elaborate submissions. She took me through certain portion of the evidence as well as copy of the transcription of the recorded conversation to impress that there was clear evidence of demand of bribe amount. It is pointed out that the tainted currency notes were seized from the accused in presence of panch witnesses and trap party. She would submit that the evidence of complainant was well corroborated by the complaint and other evidence. The demand was verified through recorded conversation and therefore, the trial Court utterly failed in appreciating the evidence.

4. Per contra the learned Counsel appearing for the respondent accused has supported the judgment of acquittal. He also took me through certain observations from the impugned judgment to impress that the trial Court was well justified in acquitting the accused. He would submit that the tape recorded conversation nowhere suggest the clear demand of bribe amount. The complainant had not applied for issuance of Weaver Identity Card, however, the transcription was relating to design and about craft mela. It is his submission that the trial Court has properly analyzed the evidence and the view expressed by the trial Court cannot be said to be

perverse.

5. It is the prosecution case that the accused was serving as a Deputy Director, Weaver Service Centre, Nagpur meaning thereby a public servant within Section 2[d] of the Prevention of Corruption Act. The accused has demanded bribe of Rs.8000/- to the complainant for issuance of Weavers Identity Card. On the basis of said demand, the complainant approached to the office of CBI on 22.07.2014 and filed report. The demand was got verified through tape recorded evidence. The officer has led trap in which the accused was found accepting bribe namely tainted currency notes of Rs.4000/-. The record indicates that the prosecution has examined in all 12 witnesses to establish the guilt.

6. With the assistance of the learned counsel appearing for the parties, I have gone through the evidence to the limited extent of grant of leave. The complainant [PW-1] was a weaver by profession. It is his evidence that on 27.06.2014, he met the accused for issuance of weavers identity card, for which the later demanded sum of Rs.8000/-. It is his evidence that on 22.07.2014, he has lodged the report and then at the instance of CBI Officer it was decided to verify the demand. Accordingly he met the accused on which there was a

4

demand of bribe. The conversation was recorded in voice recorder. He has also stated about actual trap. It is his evidence that he had handed over tainted currency notes of Rs.4000/- to the accused, who counted the same by right hand and accepted the same. Evidence of P.W.2 shadow panch witness was led to corroborate the version of the informant. The prosecution has examined P.W.3 for the purpose of identifying the voice of the accused. Evidence of P.W.8 expert has been led on the point of voice examination. I have gone through the evidence of trap leading officer P.W.4 – Gupta, who had stated in detail about the demand, acceptance of bribe and procedural aspect. Besides said evidence, I have gone through the transcript and telephonic/recorded conversation. It cannot be said that there was no element to indict the demand of bribe amount.

7. The learned counsel for the accused would submit that unless there is perversity, it is not permissible for the appellate Court to reverse the finding of acquittal. He would submit that since the evidence of prosecution was not trustworthy, leave should not be granted. In support of said contention he relied on paragraph no.20 and 21 from the judgment of Hon'ble Supreme Court in case of **State of Maharashtra .vrs. Sujay Mangesh Poyarekar – (2008) 9 SCC 475**, which was referred in paragraph no.4 of the judgment of Supreme

Court in case of State of Maharashtra .vrs. Shankar Ganpati Rahatol and others – 2019 All MR (Cri) 1697 (SC). The relevant portion is reproduced hereinbelow.

“20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial Court must be allowed by the appellate Court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the Court would not enter into minute details of the prosecution observing that evidence the and judgment refuse of leave acquittal recorded by the trial Court could not be said to be ‘perverse’ and, hence, no leave should be granted.”

8. No doubt at the time of grant or refusal of leave to appeal, the application of mind is necessary. The Court has to consider whether prima facie case has been made out or not. Pertinent to note that the Supreme Court has also cautioned that at this stage the Court

6

shall not enter into minute details of the prosecution evidence and refuse leave by holding that the judgment of trial Court is perverse.

9. Infact the provisions of sub-clause [3] of Section 378 of the Code is meant to weed out the un-meritirous litigation at the threshold. At this stage it is expected that the Court should have an over all view of the matter on prima facie basis. It is not permissible to scan the entire evidence like deciding the appeal finally. In that context, a bare perusal of the evidence led by prosecution coupled with marked documents, reveals that certainly there are arguable points. The complainants' evidence is specific about demand of bribe and consequential acceptance of tainted currency notes. In the circumstances, it cannot be said that there is no substance to proceed further by branding the prosecution case as totally meritless. In that view of the matter, the entire evidence requires re-appreciation. Hence, leave granted.

Admit. Call for R & P.

Learned Counsel appearing for the respondent waives notice.

JUDGE

Rgd.