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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1114 OF 2023

Ramkrushna Hanumant Tonpe @ Yogesh] .. Appellant

vs.

State of Maharashtra] .. Respondents

Mr.Benimadhav Goswami, for the Appellant.

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

CORAM : BHARATI DANGRE, J

DATE : 17th October, 2023.

P.C.

1] The present Appeal filed under Section 454 of the Cr.P.C. , seek recall of the direction No.3 in the operative portion of the Judgment delivered by the Special Judge (ACB) and Additional Sessions Judge, Thane, on 18.11.2022 , which reads to the following effect :-

“3. Muddemal articles No.1 and 2 i.e. Cash of Rs.12,500/- (Rs. Twelve Thousand Five Hundred only) and Rs.4,00,200/- (Rs.Four Lakhs Two Hundred only) be confiscated to the Government.”

2] The Appeal has been filed, questioning the order of confiscating the amount of Rs.4,00,200/- to the Government, on the ground that the

Appellant has been acquitted of the charges levelled against him by the Special Judge and this amount, which is directed to be confiscated is not the bribe amount or related to the alleged crime.

3] Heard the learned counsel for the Appellant and the learned APP for the State.

When the impugned Judgment is perused, it is evident that three accused persons faced the trial under Section 7, 8, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

As far as present Appellant is concerned, he is indicted on the ground that he is an agent in the office of RTO Thane and was engaged in the work of depositing road tax, fine, insurance amount, registration of new vehicles etc. and he used to charge the owners of the vehicle for discharging his duty.

Accused nos.1 and 2 are the employees of the RTO and it is the case of the prosecution that the complainant made a grievance that his truck loaded with stone crush was intercepted by Accused No.2 and when he sought justification from him, he was told that a sum of Rs.12,500/- per month shall be paid to RTO and he was asked to contact the agent i.e. Accused No.3 whose mobile number was also provided. This resulted in complaint being lodged with verification of demand and laying of a trap.

Accused Nos.2 and 3 came to be arrested and on completion of investigation, they faced the trial.

4] On appreciating the evidence which was placed before the concerned Court through five witnesses, which included, the complainant, sanctioning authority, the Investigating Officer and Motor Vehicle Inspector, the Special Court arrived at a conclusion, by discerning the role of the present Applicant i.e. Appellant No.3, in Para no.42, as follows :-

“The defence of accused No.3 is also required to be seen. He is working as agent in the office of R.T.O. Thane. It has come on record during the cross-examination that the complainant was having five trucks which were being used for the purpose of transportation of building material. Action was taken by the R.T.O. against the violation of provisions of Motor Vehicles Act against the complainant. It has also come on record that fine was imposed upon him for violation of the provisions of law such as overloading, non payment of tax, etc. So it is possible that he might have paid the amount of Rs.12,500/- to accused No.3 for depositing the same in the office of R.T.O. towards fine.”

It is specifically explained by the court that it has come on record

during the cross-examination, that the complainant was having five trucks which were being used for the purpose of transportation of building material and action was taken by the RTO against the violation of the provisions of Motor Vehicles Act and fine was imposed on him for his indulgence in overloading, non payment of tax. It is, therefore, concluded that the amount of Rs.12,500/- paid to Accused no.3 would have been for depositing the same in the office of RTO towards fine.

In Para 43, the Special Judge has recorded to the following effect :-

“43. Although the amount of Rs.4,00,200/- was found in the regzine bag of accused No.3. According to learned Advocate for accused No.2 same was received by him from owners of vehicles for depositing in R.T.O. office. He has not given details of the said amount. He has not claimed the amount for 11 years. Therefore, the amount is required to be confiscated.”

5] Since all the three accused stood acquitted of the charges levelled against them, I do not think that the observations made in Para 43 of the impugned Judgment are justified.

Furthermore, the learned Judge has fallen in error when he observed that no application was made by the accused no.3 for return

of his money, as the learned counsel for the Appellant has invited my attention to Order passed below Exhibit 1, on an application for return of cash of Rs.4,00,200/- seized by ACB, Thane, in CR No.II-147/11 of Wagle Estate Police Station., when the Application came to be rejected by recording that it is not desirable to pass the order regarding interim custody of the said amount , keeping in mind the nature of the offence for which he was trapped.

6] Now the accused persons stand acquitted and the said observation would not have any value and while passing the order disposing of the property on the conclusion of trial, as per Section 452 Cr.P.C, I do not think that the confiscation of the said amount, when the prosecution has failed to prove the charge under the PC Act, against all the accused, is justified.

Hence, the direction No.3 issued by the impugned Judgment for confiscating the amount of Rs.4,00,200/- to the Government is set aside. The amount so mentioned of Rs.12,500/- (being the alleged bribe amount and the amount of Rs.4,00,200/- which is seized from the Appellant, is directed to be refunded to the Appellant.

Appeal stands allowed in the aforesaid terms.

[BHARATI DANGRE, J]