(2018) 09 BOM CK 0033

In the Bombay High Court

Case No : Criminal Revision Application No. 595 Of 2015

Hira Sitaram Patil	APPELLANT
Vs	
State Of Maharashtra,	RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 227, 228
Indian Penal Code, 1860 — Section 34, 109, 119, 120B, 304, 308, 336, 337, 338, 420, 427, 465, 467, 468, 471
Prevention of Corruption Act, 1988 Section 13(1)(d)
Indian Evidence Act, 1872 — Section 34

Citation : (2018) 09 BOM CK 0033

Hon'ble Judges : A. S. GADKARI, J

Bench : Single Bench

Advocate : Girish Kulkarni Karan Kadam, Shishir Hiray, Arfan Sait

Final Decision : Disposed Off

Judgement

1. By the present Revision Applications, the Applicants have impugned Orders passed by 2nd Additional Sessions Judge, Thane below ExhibitÂ178

dated 30th November 2015 and below Exhibit 228 dated 30th November 2015 respectively, thereby, rejecting their Applications for discharge under

Section 227 of the Code of Criminal Procedure in Special Case No. 17 of 2013 arising out of C.R. No. IÂ?63 of 2013.

2 Heard Mr. Mundargi, the learned Senior Counsel appearing for the Applicant â?" Mr. Shrikant R. Sarmokdam in Revision Application No. 22 of

2016 and Mr. Girish Kulkarni, the learned Counsel appearing for the Applicant â?" Mr. Hira S. Patil in Revision Application No. 595 of 2015.Â

3 The Applicant in Revision Application No. 22 of 2016, is accused No.22 and the Applicant in Revision Application No. 595 of 2015, is accused No.6

in CR No. IÂ63 of 2013 registered with Shil Diaghar Police Station, District Thane dated 4th April, 2013 under Sections 109, 119, 304, 308, 336, 337,

338, 420, 427, 465, 467, 468, 471 and 34 read with Section 120ÂB of the Indian Penal Code and under Section 13(1)(d) of the Prevention of

Corruption Act. The Applicant â?" Mr. Shrikant R. Sarmokdam is working as a Deputy Commissioner with Thane Municipal Corporation and the

Applicant â?" Mr. Hira Patil was a Corporator of the concerned ward wherein, the incident in question has taken place.

4 The prosecution case in brief is that, on 4th April, 2013 at about 5.00 p.m. a seven storied building known as â??AdarshÂ'B', which was being

constructed in Lucky Compound on City Survey No. 98 (1) (b) situated at Shil Diaghar collapsed.Â The said building was being constructed by

accused Nos. 1 and 2.Â The said building collapsed within a period of about four months from the date of its construction. That, in the said incident

76 human beings lost their lives and 64 persons received serious to grievous injuries.Â

It is the further prosecution case that, the principal accused Nos. 1 and 2 hatched a conspiracy with the other accused persons and erected the said

unauthorized construction of seven storied building with extremely low/poor quality materials and in a hurried manner, without taking any necessary

permission or care and managed to complete the construction of the said building within three months. It is alleged that, the Applicant â?" Mr. Shrikant

Sarmokdam being a Deputy Commissioner of the concerned zone, for not taking any action against the said illegal construction, accepted illegal

gratification from Jamil Ahmed Shaikh (AccusedÂ?2) in furtherance of the said conspiracy.Â

It is alleged that, the Applicant Mr. Hira Patil was a Corporator of the said ward wherein, the said building was being constructed and he, with a view

to favour the principal accused and for not lodging any complaintÂ against unauthorized construction with the Municipal Corporation, extracted an

amount of Rs.4,03,000/from time to time and through his associate Mr. Afhan Raut (Accused26) from the builder (Accused No.2). The police, after

completion of investigation, submitted chargeÂ?sheet in the case and the said case is culminated into Special Case No. 17 of 2013.

5 The Applicants, thereafter, preferred the aforeÂstated Applications below Exhibit Nos. 178 and 228 respectively under Section 227 of the Code of

Criminal Procedure for their discharge, which have been rejected by the Trial Court by the impugned Orders dated 30th November, 2015.

6 Mr. Mundargi, the learned Senior Counsel appearing for the Applicant â?" Mr. Shrikant Sarmokdam submitted that, on the date of incident i.e. on

4th April, 2013, the Applicant was not inÂcharge of the concerned zone i.e. zone No.1 and as a matter of fact, he was transferred from the

concerned zone on 24th June 2012 and therefore, he has no direct concerned for either taking or not taking action against the alleged illegal

structure.Â He further submitted that, the said illegal structure was earlier demolished on 10th November 2012 under the supervision of an Officer

Mr. Godbole.Â Â He submitted that, though in the search of premises of the office of Mr. Jamil Shaikh (AccusedÂ2), the builder of the said building,

a diary was found with an entry 'Sarmokdamâ?"50,000/Â', there is no evidence on record to connect the Applicant that, for not taking any action, the

said amount was paid to the Applicant.Â He submitted that, as a matter of fact, the Applicant is denying such receipt of any payment. He further

submitted that, except some witnesses in their statements have stated that, some of the people used to come at site in cars with having yellow and red

beacons and were found sitting in the building premises, there is no other material to connect the Applicant with the present crime.Â He, therefore,

submitted that the present Revision may be allowed and the Applicant may be discharged from the case.

7 Mr. Kulkarni, the learned counsel appearing for the Applicant â?" Mr. Hira Patil submitted that, the impugned Order passed by the Trial Court is a

cryptic order, without any detailed reasoning thereto.Â He further submitted that, the entry in the diary of Jamil Shaikh (AccusedÂ2) is not admissible

under Section 34 of the Indian Evidence Act, 1872, as against the Applicant, though his name is mentioned therein.Â He submitted that, the alleged

noteÂbooks seized from the office of Jamil Shaikh (AccusedÂ2) are not maintained in regular course of business and requires reliability to make a

foundation of the police investigation.Â He further submitted that, the entries in the alleged diary/noteÂbooks mentions that, through Mr. Afhan Raut,

the said money is forwarded to the Applicant and therefore, the Applicant has no direct concern with the transaction, being a third party.Â In support

of his contention, he relied upon a decision of the Supreme Court in case of Common Cause (A Registered Society) & Ors. Vs. Union of India, reported in MANU/SC/0052/2017 : AIR 2017 SC 540.Â He, therefore, prayed that, the present Revision Application may be allowed and the

Applicant may be discharged from the offences.

8 The evidence on record indicates that, the witnesses have stated that, some Government Officers used to come to the site of Jamil Shaikh (Accused

No.2) in cars having yellow and red beacons and they used to tell Jamil Shaikh (AccusedÂ 2) to expedite the work ofÂ construction.Â Witness

Mohammed Sagir Idris Anshari (Raju Ansari) has stated that, he knows various officers from the Thane Municipal Corporation and in the year 2012

at the request of Jamil Shaikh, he introduced ApplicantÂ Shrikant Sarmokdam, the Deputy Commissioner of Thane Municipal Corporation with Jamil

Shaikh at Mumbra.Â The record clearly indicates that, though the Applicant Shrikant Sarmokdam was transferred from ZoneÂ1 of Thane Municipal

Corporation on 24th June, 2012, he was holding additional charge of the said area from 15th September 2012 to 28th September, 2012. That, the

Applicant, have held an additional charge of the said Zone intermittently and has clearly failed in taking legal action against the illegal construction of

Jamil Shaikh (AccusedÂ2).Â The evidence on record further indicates that, on a particular day, there was some telephonic communication between

the Applicant Shrikant Sarmokdam and Jamil Shaikh (AccusedÂ2) and the mobile tower location of both the persons is one and the same, located at

Kausa, Mumbra.Â

9 That, during the course of investigation, the premises of Jamil Shaikh was searched by the Investigating Agency and four duly bound noteÂbooks

were seized from his office.Â The said noteÂbooks are running Account Ledgers of Jamil Shaikh wherein, there is an entry of payment of

Rs.50,000/Â to the Applicant Mr. Shrikant Sarmokdam.Â It prima facie appears that, the Applicant Mr. Shrikant Sarmokdam for doing undue favour

of the said coÂaccused Jamil Shaikh, has accepted the said amount as illegal gratification otherwise than a legal remuneration thereby clearly

attracting the provisions of the Prevention of Corruption Act.Â

10 As far as the Applicant Mr. Hira Patil is concerned, he was a Corporator of the said ward, where the incident took place.Â During the search of

his office premises, the Investigating Agency found certain complaints made by the residents of that ward, pertaining to the illegal construction of the buildings which were being carried out in the locality.Â It is the prosecution case that, by using those complaints as a tool of extortion, the Applicant

has extracted an amount of Rs.4,03,000/Â? from Jamil Shaikh (AccusedÂ?2).Â

11 I have personally perused the said noteÂbooks seized by the Investigating Agency.Â It is to be noted here that, the said duly bound four noteÂ?

books, are in fact, Books of Accounts of Jamil Shaikh (AccusedÂ2) and the same were maintained in normal course of business having various

names mentioned serially with dates therein.Â Those are not loose papers/ sheets.Â Prima facie, it appears that, the said books of Accounts are

maintained in regular course of business of Jamil Shaikh (AccusedÂ2) and those are admissible as evidence under Section 34 of the Indian Evidence

Act and therefore, the contention of the learned counsel for the ApplicantÂMr. Hira Patil, to that effect, cannot be accepted. There are various

entries by name Hira Patil in it and at one place, it is stated that 'Afhan Rautâ?"Hira Patil'.Â It is the prosecution case that, the said Mr. Afhan Raut

is an associate of Mr. Hira Patil and he, on behalf of Mr. Hira Patil, collected the money.Â

12 After taking into consideration the evidence available on record, this Court is of the considered view that, there is more than sufficient material to

proceed against the Applicants to frame charge under Section 228 of the Code of Criminal Procedure and the Trial Court has not committed any error

either in law and/or on facts, while passing the impugned Order.Â The Revision Applications being devoid of merits are required to be dismissed.Â

13 It is to be noted here that, the coÂaccused Mr. Subhash Waghmare had preferred a Writ Petition No. 645 of 2016 before this Court, against the

Order of rejection of his Application for his discharge.Â This Court, in its Order dated 4th April, 2017 has observed that, the trial pertaining to the

present case has already commenced and the prosecution is in process of recording substantive evidence of the witnesses and in view thereof, the

Petition was dismissed as infructuous. The record further indicates that, in the present ApplicationsÂ on 6th August, 2018, this Court had noted the

submission of the learned Special P.P. that the prosecution till that date had examined 19 witnesses.Â

14 In view of the above, the learned 2nd Additional Sessions Judge, seized of Special Case No.17 of 2013 is hereby directed to expedite the hearing of

the said trial and to conduct it on dayÂ?toÂ?day basis and conclude the same within a period of one year from today.

15 Revision Applications are dismissed with aforesaid directions.

16 In view of dismissal of the Revision Application No. 22 of 2016, Criminal Application Nos.263 of 2017 and 264 of 2017 do not survive and the

same are accordingly disposed off.Â Â

