

Shridhar Namdeo Lawand

v.

State of Maharashtra

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. P. SATHASIVAM HON'BLE MR. JUSTICE RANJANA PRAKASH DESAI HON'BLE MR. JUSTICE RANJAN GOGOI

Criminal Appeal No. 1124 Of 2013 (@ Special Leave Petition (Crl.) No. 6007 Of 2013) | 05-08-2013

1) Heard learned counsel for the parties.

2) Leave granted.

3) Against the conviction and sentence under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, the appellant has approached the High Court by way of Criminal Appeal No. 220 of 1997.

4) Learned counsel appearing for the appellant has pointed out the following two infirmities in the impugned order.

(i) The appellant was not heard and the appeal was disposed of only on the basis of the statement made by the Counsel-State.

(ii) The High Court has not gone into all the details and has not appreciated the evidence placed by both sides.

5) In the light of the said contention, we have carefully perused the impugned order. Even at the first sight, we noticed none appeared for the appellant-accused before the High Court. This is evident from para 2 of the impugned order. Though, the High Court has mentioned certain factual details, the fact remains that it has not analyzed the evidence led by the prosecution and defence pleaded by the appellant-accused.

6) It is settled law that court should not decide criminal case in the absence of the counsel for the accused as an accused in a criminal case should not suffer for the fault of his counsel and

the court should, in such a situation must appoint another counsel as an amicus curiae to defend the accused.

7) It is also equally settled that it is the duty of the appellate court to look into the evidence adduced in the case to arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon then whether prosecution can be said to have been proved beyond reasonable doubt on the said evidence. To put it clear, the credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. In the case on hand, the said recourse has not been followed by the High Court.

8) All the above principles have been reiterated in:

i) Bani Singh & Ors. vs. State of U.P., (1996) 4 SCC 720 (Larger Bench)

ii) Harjinder Singh vs. State of Punjab, (2010) 13 SCC 533 iii) Iqbal Abdul Samiya Malek vs. State of Gujarat, (2012) 11 SCC 312 iv) K.S. Panduranga vs. State of Karnataka, (2013) 3 SCC 721

9) Accordingly, we set aside the impugned order and remit the matter to High Court for fresh disposal. We request the High Court to restore Criminal Appeal No. 220 of 1997 on its file and dispose of the same on merits, after affording opportunity to all the parties concerned.

10) It is brought to our notice that the appellant is in custody for nearly two months as against the sentence of two years. Taking note of the said aspect, we are inclined to consider the claim of the appellant for bail. Therefore, the appellant is ordered to be released on bail to the satisfaction of the Special Judge for Greater Bombay in Session Case No. 57 of 1990 arising out of FIR bearing CR No. 14/1989 PS, Anti Corruption Bureau, Greater Bombay till the disposal of the appeal pending before the High Court.

11) The Special Judge is free to impose appropriate condition(s) as he deems fit.

12) The appeal is disposed of accordingly.