

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.919 OF 2003

STATE OF KARNATAKA

.....

APPELLANT

VERSUS

KEMPAIAHMATH

BASAVARAJ SHARANAIAH

.....

RESPONDENT

O R D E R

The trial court had convicted the respondent herein under the provisions of the Prevention of Corruption Act. The judgment of the trial court was set aside by the High Court and the respondent acquitted by judgment dated 15.07.2002. The State has come in appeal before us after the grant of special leave.

We have heard the learned counsel for the parties.

We find that there were three material witnesses in the present case. P.W. 1 - the complainant, P.W. 2 - the trap witness and P.W. 5 - the shadow witness. Concededly, P.W. 1 - the complainant did not support the prosecution story and disowned the statements attributed to him in his statement under Section 161 of the Code of

Criminal Procedure as also in the complaint. P.W. 2 - the shadow witness testified that he was not sitting in the verandah outside the room where the money had been passed on and was not in a position to hear the conversation that took place inside the room. P.W. 3 - the draftsman who had drawn the site plan was even more categorical that if P.W. 2 was sitting in the verandah which did not have a connecting door with the room where the respondent accused was sitting, it would not have been possible to hear the conversation that was going on in the room. We are, therefore, left only with the statement of P.W. 5. His statement also is ambivalent on material particulars and as he was a shadow witness he was standing a long distance away from the room where the bribe had been handed over. He was, therefore, not in a position to see as to what had transpired. Moreover, the High Court has on an appreciation of the evidence recorded a finding of acquittal. We would be hesitant to interfere with this finding.

The appeal is dismissed in the aforesaid terms.

.....J
[HARJIT SINGH BEDI]

.....J
[DEEPAK VERMA]

NEW DELHI
NOVEMBER 24, 2009.

