

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5205 OF 2014

1. Manoj s/o Chandrakant Phutane
Age 43 years, Occupation: The then
Director of M/s Kala Enterprises, Pune
and Managing Director foM/s Kala
Gensets Pvt. Ltd. Pune,
R/o Flat No. 537, Sector 27, Pradhikaran,
Nigadi, Pune 44
2. Sanjay s/o Chandrakant Phutane, ... **Applicants**
Age 40 years, Occupation: The then
Director of M/s Kala Enterprises, Pune
and Managing Director foM/s Kala
Gensets Pvt. Ltd. Pune,
R/o Flat No. 537, Sector 27, Pradhikaran,
Nigadi, Pune 44

VERSUS

The State of Maharashtra
(Through C.B.I. A.C.B. Pune and PP,
High Court of Judicature of Bombay,
Bench at Aurangabad)

Mr. Amol Kakde h/for Mr.Nilesh S. Ghanekar, Advocate for applicants
Mr. D. H. Bhogle, APP for the State.
Mr. Alok Aharma, Advocate for the respondent.

CORAM : T. V. NALAWADE &

DATE : 6th July, 2015

PER COURT:

1. The application is filed to challenge the order made on Exh. 101 in
Special Case No. 7/2008 presently pending in the court of Sessions Judge,
Ahmednagar. Sessions Judge has directed to frame charge against the

petitioners for the offences punishable under sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988 read with sections 120-B, 420 of the Indian Penal Code. There will be separate charge for offence of conspiracy and also for offence of cheating with conspiracy.

2. The submissions made by both the sides show that the case was filed against two public servants and the petitioners in respect of irregularities and illegalities noticed in allotment of some work like purchase order. There is allegation that proper procedure was not followed and the order of goods was placed with the present petitioners worth more than Rs.4.4 crores. There are allegations that the present applicants had joined hands with two officers of BSNL for making wrongful gain and in furtherance of their conspiracy, orders were placed. There is allegation that proper procedure like issuing tender, considering requirement etc. was not followed and due to that loss was caused to the Central Government.

3. Learned counsel for the applicants submitted that the crime was registered against the other accused, higher ups also but the competent authority refused to grant sanction in respect of those officers and sanction was granted in respect of accused Nos. 4 and 5 only. Learned counsel submits that accused Nos. 4 and 5 are also dead and so the charge cannot be framed against the applicants under the aforesaid head and for the offences mentioned above.

4. On the point raised the judgment of Apex Court reported in ***AIR 2001 SUPREME COURT, 2120 in the case of Rambhau and another Vs. State of Maharashtra*** can be referred. It needs to be observed in the present case that charge could have been framed for offence punishable under Section 120 B read with Section 409 of the IPC also. The other statement made by the learned counsel for the applicants shows that the competent authority refused to grant sanction in respect of higher ups, officers of higher rank and due to that the present applicants are entitled to relief cannot be considered. Thus no error is committed by the learned Trial Judge in deciding to frame charge for the aforesaid offences and also for the offences punishable under section 420 read with 120 B of the Indian Penal code.

5. In the result, the criminal application stands dismissed.

(T. V. NALAWADE, J.)

JPC