

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1142 OF 2013

Abdul Aleem s/o. Abdul Hai **....Petitioner.**

Versus

The State of Maharashtra **....Respondent.**

Mr. M.P. Kale, Advocate for petitioner.

Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 12th June, 2015.

ORDER :

1. The petition is filed to challenge the order made by the learned Chief Judicial Magistrate, Parbhani by which he has refused to discharge the petitioner in a case filed for offences punishable under sections 409, 420, 467, 468, 109, 34 etc. of Indian Penal Code. This order was challenge by filing the revision and the Sessions Court has dismissed the revision. Both the sides are heard.

2. The learned counsel for petitioner submitted that the main accused, the Chief Officer is discharged by the Special Judge appointed under the provisions of Prevention of Corruption Act, 1988. He submitted that when the Court found that there

was no sanction under provisions of P.C. Act, 1988, the Court discharged him. It is contended that the case as against the Chief Officer and present applicant/accused, who was working as Stenographer, was not separable. He further submitted that the entire case filed against all the accused including the present applicant ought to have been disposed of and so, the applicant is entitled to discharge. He further submitted that if there was no sanction for prosecution for the offences committed under the P.C. Act, there was no sanction for prosecution for the offences under the I.P.C. like section 409 of I.P.C. also and so, on the ground of parity, the learned C.J.M. ought to have discharged the applicant also.

3. The aforesaid submissions are not at all acceptable. Section 221 of Cr.P.C. shows that when act of accused falls under two or more provisions of the same Act or different criminal Acts, he can be charged and tried for such offences. In the present case, even if it is presumed that he is discharged in respect of the offences punishable under the P.C. Act, there are the offences punishable under the I.P.C. as already mentioned. It cannot be said that these offences cannot be separately tried. Further, the contention that when the Chief Officer is discharged, the case cannot go against the other accused, cannot be

accepted. This Court has no hesitation to observe that the learned Special Judge has committed error in discharging the main accused by observing that there was no sanction under section 19 of P.C. Act. When the cognizance itself could not have been taken by the Special Judge in respect of the offences committed under the P.C. Act, there was no question of discharge. It is surprising that the State has not challenged that decision. However, present applicant cannot take benefit of that order.

4. This Court had occasion to discuss the requirement of sanction under section 197 of Cr.P.C. when a case is filed under section 409 of I.P.C. in **Criminal Writ Petition No. 1033/2013 [Suresh Bhikamchand Jain Vs. State of Maharashtra] decided on 10.10.2014**. It is well settled law that for prosecution in respect of the offence punishable under section 409 of I.P.C. there is no need to obtain sanction under section 197 of Cr.P.C. as the act of misappropriation of money by public servant cannot fall under the discharge of the duties. In view of this position of law, this Court holds that both the learned Sessions Judge and the learned C.J.M. have not committed any error in rejecting the discharge application filed by the petitioner.

5. In the result, the petition is dismissed.

[T.V. NALAWADE, J.]

SSC/