

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 652 OF 2016

SHARAD MANGA TAYADE.
VERSUS
THE STATE OF MAHARASHTRA.

...

Advocate for Petitioner : Shri V.Shekhar, Senior Advocate a/w Shri Kakade
Amol N.

APP for Respondent/State : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th June, 2016

Per Court:

1 The Petitioner is aggrieved by the order dated 20.04.2016 passed by the learned Additional Sessions Judge/ Special Judge, Nanded below application Exhibit-7 in Case No.ACB/07/2015, thereby rejecting the application for discharge.

2 The contention of the Petitioner is that an application Exhibit-7 was moved in Case No.ACB/07/2015 seeking discharge from being prosecuted for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the 1988 Act"). The said application has been rejected by the Special Court without application of mind.

3 The gravamen of the submissions of the Petitioner is that a person, who was not entrusted with the work, for which the Petitioner has allegedly sought illegal gratification to clear his bills, is the Complainant and on the basis of his complaint, prosecution has been launched against the Petitioner under the 1988 Act.

4 Shri Shekhar, the learned Senior Advocate appearing on behalf of the Petitioner, points out the document at page 68 of the petition paper book being the tender proposal which was at the level of the Executive Engineer (Works), North Division, Zillha Parishad, Nanded for construction of a Cement Concrete road in village Umari (J), Taluka Hadgaon, District Nanded. The name of the contractor is mentioned as the Sarpanch of Village Panchayat, Umari (J). The tender cost was estimated at Rs.1,97,103/-.

5 The minutes of meeting with Resolution No.13 passed by the Village Development Officer is referred to, to indicate that the work was being performed for Village Panchayat, Umari and the same was to be got done by and through the Sarpanch.

6 It is submitted that one Mr.Sachin Balaji Chavan, who is the

Complainant in this matter and the brother of the Member of Zilla Parishad Mrs.Pawar, was interested in the contract of the said work. It is the contention of the Petitioner that Mrs.Pawar tried to impress upon the Petitioner that her brother (Complainant) be given the contract for construction of Cement Concrete (CC) Road under the Thirteenth Finance Commission of the Zilla Parishad for the year 2013-2014. The Petitioner, after considering that the Complainant was not qualified to receive the contract, refused to oblige Mrs.Pawar and that was the reason why Mrs.Pawar planned to grind an axe against the Petitioner.

7 The Petitioner has then referred to the tender allotment which is at page 70 of the petition paper book to support his contention that the Sarpanch was given the contract for preparation of C.C. Road. It is then submitted that the work was completed and the same is evidenced by the document at page 77. The date of starting the work was 07.05.2014 and the date of it's completion was 06.08.2014. The amount of tender was Rs.1,97,103/-.

8 The Petitioner submits that he was promoted to the position of the Superintending Engineer and was to be relieved in September, 2014. Mrs.Pawar decided to take revenge against the Petitioner through her brother the Complainant and it is in this backdrop that the complaint

dated 30.09.2014 was lodged by the Complainant with the Anti Corruption Bureau.

9 The Petitioner strenuously submits that the offences for which the Petitioner is being prosecuted would not fall under Section 7 of the 1988 Act and as such, he would not be held liable for having committed any offence amounting to criminal misconduct and consequentially, he would not be held guilty for the said offences under the 1988 Act.

10 The Petitioner submits that the letter written by the Sarpanch to the Director General, Anti Corruption Bureau dated 06.10.2014 would be a clinching issue. The said document at page 91 of the petition paper book has been referred to by the learned Senior Advocate in support of his contention that the Sarpanch himself has addressed the said letter to the Director General, Anti Corruption Bureau clearly stating therein that the Complainant was in no way concerned with the work and it was the Village Panchayat which has undertaken the work. The Petitioner had given the work order under his signature on 07.05.2014 and after completion of the work by the Village Panchayat, the bill was submitted for sanctioning through the Deputy Engineer on 08.09.2014. It is further submitted that the said bill was submitted to the Executive Engineer for inspection and sanctioning on 19.09.2014. There was no delay in getting

the payment. Therefore, the Sarpanch did not personally contact the Petitioner, much less on telephone or cellular phone.

11 It is further submitted that the Sarpanch has stated in paragraph 6 that the bill amount was received and credited to the account of the Village Panchayat and from the said account, it is disbursed to the concerned persons who performed the work and executed the contract. It is further pointed out that the Sarpanch has stated in the said letter that the Complainant was in no way concerned with the work and therefore, there was no reason for the Sarpanch or any other person to contact the Petitioner or attempt to give him money.

12 It is, therefore, submitted that the Trial Court while considering the application for discharge under Section 227 of the Code of Criminal Procedure was under an obligation to consider all the documents placed on record before forming an opinion as to whether, the Petitioner deserves to be discharged from the proceedings. It is strenuously submitted that even if the application was to be rejected and as has been done by the Special Court in this case, it was incumbent upon the learned Judge to assign reasons as to why the application deserves to be rejected.

13 The grievance, therefore, is that the learned Judge while

assigning reasons for rejecting the application, was expected to consider the record before it and then conclude that the Petitioner deserves to be prosecuted. The impugned order is cryptic in nature and indicates a cursory reference to the documents as have been perused without factually doing so. It is further submitted that it is trite law that the learned Judge is expected to assign appropriate reasons for rejecting the application while considering such an application under Section 227 of the Code of Criminal Procedure.

14 The learned APP supports the impugned order.

15 I have considered the submissions of the learned Advocates as have been recorded herein above.

16 Sections 7 and 13 of the 1988 Act reads as under:-

“7. *Public servant taking gratification other than legal remuneration in respect of an official act.*

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central

Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.-

(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

"13. Criminal misconduct by a public servant:-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for

himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

- (2) *Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”*

17 I find, prima facie, that there is surely enough material which throws up several issues which would fetch answers and that would be possible only after the matter is adjudicated upon. Though the Petitioner has placed heavy reliance upon the letter issued by the Sarpanch dated 06.10.2014 and a subsequent affidavit of the said Sarpanch dated 25.02.2015, in my view, it needs to be considered as to what prompted the Sarpanch to write such letter to the Director General, Anti Corruption Bureau and whether, the said letter was issued on request or under duress of any person, since the Anti Corruption Bureau had not called upon the Sarpanch to express his views after the Petitioner was arrested.

18 It also needs to be established as to which contractor actually performed the work of construction of C.C. Road on behalf of the Sarpanch. It has nowhere come on record that the Village Panchayat had engaged some different contractor for performing the said work. As such, whether, the Complainant had actually performed the work and for which, he was claiming remuneration, needs to be gone into. He has alleged that

the Petitioner demanded a bribe to clear his bills for having constructed the C.C. Road.

19 It cannot be ignored that the Petitioner was apprehended raid-handed after the complaint was filed by the Complainant and which was verified in accordance with the procedure applicable. The digital voice recorder is said to contain the discussion in between the Petitioner and the Complainant and the demand of bribe/ illegal gratification is said to be a part of the voice recording. It also cannot be ignored that the Petitioner was arrested while accepting the bribe amount by himself.

20 In the light of the above, I find, prima facie, that there is material available for proceeding with the prosecution of the Petitioner. I do not find that the impugned order would, therefore, be termed as being perverse or erroneous merely because the learned Judge has not expressed all the above mentioned aspects in extenso in the impugned order.

21 In the light of the above, no interference is called for. The Criminal Writ Petition is, therefore, dismissed.