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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2398/2017

Dilip s/o Sheshrao Metalwad,
age 33 yrs., occu.service (suspended),
r/o Ravinagar, Kapileshwar Nagar,
New Kautha, Nanded.
Tq. & Dist.Nanded.

...Applicant..

Versus

1] The State of Maharashtra,
through Anticorruption Bureau,
Osmanabad. Tq. & Dist.Osmanabad.

2] Balbhim s/o Balu Kshirsagar,
age 30 yrs., occu.business,
r/o at present c/o Jawahar Dhohare,
Sai Chowk, New Sangvi, Pune, AND
permanent r/o Borul Tq.Tuljapur
Dist.Osmanabad.

...Respondents...

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Shri J.M. Murkute, Advocate for applicant.
Shri K.S. Patil, APP for respondent no.1.
Respondent no.2 served.

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CORAM: PRAKASH D. NAIK, J.

ORDER RESERVED ON 7.11.2017

ORDER PRONOUNCED ON 19.12.2017

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] The applicant has preferred this application by

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invoking the inherent powers of this Court u/s 482 of the Code of Criminal Procedure. The applicant has challenged the order dated 11.4.2017 passed below Exhibit 7 by the learned Sessions and Special Judge, Osmanabad, in Special Case (ACB) No.23/2016.

3] The applicant is being prosecuted in the prosecution initiated by the Anticorruption Bureau for offences u/s 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short the Act). The First Information Report in that regard was lodged on 25.8.2016 vide Crime No.252/2016. On completing the investigation, the charge-sheet was filed before the Special Court.

4] The prosecution case is that the applicant had demanded a sum of Rs.1,000/- from the original complainant for issuing the 7/12 extract, although the amount was not accepted and that the accused was not caught receiving the said amount, the demand was made by the applicant, which is, according to the prosecution, established by the evidence on record. The applicant preferred an application for discharge before the Special Court. The said application was rejected vide order dated 11.4.2017. Hence, the applicant has preferred this

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application before this Court challenging the order refusing discharge and has sought discharge from the said criminal prosecution.

5] The applicant contends that one Hariba Sattappa Kshirsagar had filed a Regular Civil Suit No.178/2012 against Sattappa, Balu, Balbhim, Awaba and Shankar for the partition of suit land situated in Gut Nos.587 and 12/2 situated at village Barul Tq.Tuljapur. The parties in the suit were related to each other. A compromise was executed between the parties. In view of the compromise, Hariba filed an application in the office of Talathi for sanction of mutation entry on the basis of compromise dated 13.12.2014. The applicant, therefore, took the entry of application by Hariba and recorded the land and other property from Gut Nos.587 and 12/2 in the name of Hariba and others in view of the compromise dated 13.12.2014. The applicant thereafter forwarded the recorded documents to the Circle Officer for sanction and after verifying the recorded documents, the Circle Officer accorded sanction to the mutation entry on 21.3.2016. On the basis of the aforesaid sanction, the applicant recorded the names of Hariba and others to the

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7/12 extract maintained at the office of the applicant. It is further contended that in view of the compromise and sanction of 7/12 extract, the holding of land in the name of Hariba, who had preferred the RCS No.178/2012 and the respondent no.2 gets reduced. The applicant further contends that on 2.8.2016, he was transferred from Osmanabad District to Nanded. Accordingly, on 24.8.2016, he was relieved from Tahsil office, Tuljapur. On 29.8.2016, the applicant was directed to join the office of Sub Divisional Officer at Hadgaon. However, on 25.8.2016, the FIR was registered against the applicant by the Anticorruption Bureau, Osmanabad, u/s 7 and 13(2) of the Prevention of Corruption Act, 1988.

6] Learned Advocate for the applicant submits that the FIR was lodged at the instance of original complainant on account of vendetta for implementation of decree passed as holding of original complainant was reduced. It is submitted that no case is made out against the applicant to prosecute him for the offences u/s 7 and 13(2) of the Act. There is no cogent evidence to establish the said charges. It is submitted that admittedly the amount as alleged on account of illegal

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gratification was not accepted by the applicant – accused. The case of the prosecution that the demand was made is unsupported by any cogent evidence. It is submitted that the case of the prosecution that the applicant had demanded an amount of Rs.1,000/- from the original complainant for issuance of 7/12 extract in his name is imaginary and based on the concocted version of the complainant. The application for 7/12 extract was recorded on 4.3.2016, the mutation was sanctioned by the Circle Officer on 21.3.2016 and on 22.3.2016, the entry of the said sanction of mutation entry was taken in the on-line system. Therefore, in the circumstances, it is clear that no work with regard to the mutation entry was pending and there is no substance in the allegation that the applicant had demanded the bribe as alleged by the complainant.

7] The learned counsel for the applicant further submitted that on perusal of the charge-sheet filed against the applicant, it can be seen that *prima facie*, no case is made out against the applicant to frame the charge against him for the alleged offences. The method adopted while verifying the complaint itself is vitiated

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by gross irregularity. There is no corroborative evidence, which proves the theory of complainant regarding demand of bribe by the applicant. It is submitted that the Special Court had erroneously rejected the application for discharge without verifying the documents on record. The work was completed with regard to the mutation entry much prior to the date of the complaint and the requisite entry was also made in the on-line system and, therefore, the theory of demand of bribe cannot be believed. It is submitted that the verification of complaint dated 3.5.2016 was done with the help of voice recorder in which the voice of the applicant is recorded. In the said record, it is nowhere heard that the applicant had demanded bribe from the original complainant. The allegations of demand are afterthought and the same are made after realizing that the amount was not accepted by the applicant-accused. The original complaint was filed on 3.5.2016 whereas the FIR was registered on 25.8.2016 without there being any sustainable reason for delay in registering the same. It is apparent that the FIR is lodged only with a view to harass the applicant. It is further submitted that the

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applicant had sanctioned the mutation entry on the basis of the order of the Court and the land was allotted to every person who were party to the said regular civil suit. Therefore, without application by the complainant, the applicant had recorded and sanctioned the mutation entry in accordance with the order of the Court. The verification of complaint dated 3.5.2016 is done in the absence of witness and on the basis of mere signature of witnesses on the typed copy of the conversation, which cannot be accepted as genuine evidence. It is submitted that the verification of complaint by the authority is false and does not hold any evidentiary value. It is, therefore, submitted that the order passed by the trial Court is contrary to law and the applicant ought to have been discharged from the said proceedings.

8] The learned APP submitted that *prima facie* case is made out against the applicant. It is submitted that the evidence on record clearly establishes the role played by the applicant in demanding the bribe and, therefore, the contention of the applicant cannot be considered at this stage. It is submitted that there is ample evidence against the applicant, which establishes

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that *prima facie* he is involved in commission of crime and, therefore, the prosecution must be given an opportunity to lead evidence and prove its case. The proceedings need not be quashed at this stage. It is submitted that the applicant had not made out the case for discharge. The Special Court has rightly rejected the application for discharge. The case of the prosecution is that the accused had demanded an amount of Rs.1,000/-, which is fortified by the evidence on record and it is the case of the prosecution that the expressions made by the applicant-accused establishes the demand of the said amount. The contentions raised by the applicant are based on disputed questions of fact and the same cannot be considered as grounds for discharge. It is, therefore, submitted that the application referred by the applicant may be rejected.

9] On perusal of the documents on record, it appears that the prosecution case is that there was demand of money by the applicant - accused from the original complainant. The demand was made for issuing the 7/12 extract. Although it is the case of the applicant that the work relating to the mutation entry

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etc. was completed in accordance with the compromise executed between the parties, the case of the prosecution is that thereafter for issuance of the 7/12 extract, the amount of Rs.1,000/- was demanded by the applicant - accused. It is true that the trap was discontinued by the investigating agency as the amount was not accepted by the applicant - accused. However, the case of the prosecution is that there was demand from the applicant for which he is being prosecuted by the prosecution. The Special Court had rejected the application for discharge preferred by the applicant. While rejecting the said application, it has been observed by the Court that there was *prima facie* evidence to prosecute the applicant and, therefore, the case for discharge was not made out. The Special Court, therefore, rejected the application for discharge.

10] The submissions advanced by the applicant that he is being falsely implicated in the case with a view to cause harassment to him or that there was delay in recording the First Information Report cannot be a ground for discharge. The Court is required to see whether there is *prima facie* evidence against the accused for

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framing charge. The trial Court is not expected to hold a roving enquiry for deciding the issue whether the accused can be discharged from the prosecution. On the basis of the evidence on record, which has to be subjected to trial, the Special Court has rejected the application preferred by the applicant. I do not find any infirmity in the order passed by the Special Court. The irregularities and infirmities as contended by the applicant in this application as well as before the Special Court cannot be accepted as a ground for discharging him from the prosecution. The prosecution case is that the work of complainant was pending with the accused. There is sufficient material on record to proceed against the accused. The accused had contended that the three ingredients to constitute the alleged offences viz. demand, acceptance and recovery are not made out against the applicant cannot be accepted. Although the amount was not accepted, the prosecution has proceeded on the basis that there was demand from the applicant. The prosecution must be afforded an opportunity to adduce the evidence in support of its case and the applicant shall not be discharged on accepting

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the grounds raised by him. If the Court finds *prima facie* case to proceed against the accused, the Court has to frame charge. The Special Court has critically examined all the material on record and thereafter the order rejecting the application for discharge was passed. It appears from the record that pre-trap panchanama was carried out in the presence of panch witnesses. On appraisal of pre-trap panchanama, particularly the conversation recorded between the complainant and the accused reveals that there was demand of bribe at his instance. The said conversation was recorded in digital voice recorder. The complainant has stated that the accused had demanded the illegal gratification for issuing 7/12 extract. The defences agitated by the applicant in support of his application for discharge cannot be appreciated and it would be open for him to raise the said defences at the time of trial. The prosecution case is that the Tahsildar had stated during the investigation that though the mutation entry of the complainant was taken, yet its generated slip was not available on the computer and it seems that the mutation entry of the complainant was not uploaded on the

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computer. The applicant was working as Talathi at village Borul, which is not disputed. Section 7 of the Act was analyzed by the trial Court while rejecting the application. *Prima facie*, on reading the said provision, it appears that the case is made out to frame the charge against the applicant. At the stage of evaluating the truthfulness or otherwise of the allegations leveled by the prosecution against the accused, what is required to be seen is that *prima facie* the case is made out or not. In the present case, there is *prima facie* evidence that the accused had demanded bribe amount. In the circumstances, the trial Court has rightly observed that it would be impermissible to discharge the accused. I am in agreement with the observations made by the trial Court while rejecting the said application. There is substantial evidence against the applicant to *prima facie* justify the charge u/s 7 and 13(2) of th Act. The grounds raised by the applicant cannot be considered at this stage. In view of above, the application for quashing the proceedings cannot be entertained and the same deserves to be rejected. Hence, I pass the following order.

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O R D E R

a] Criminal Application No.2398/2017 is dismissed.

B] It is clarified that the observations made in this order are only for entertaining the present application and the trial Court shall deal with the proceedings in accordance with law.

(PRAKASH D. NAIK, J.)