

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

907 CRIMINAL APPLICATION NO. 2747 OF 2017

ASHOK KESHAVRAO MUNDE

VERSUS

THE STATE OF MAHARASHTRA & ANR.

.....

Mr. V.D.Sapkal, Advocate for Applicant.

Mr. G.O.Wattamwar, A.P.P. for R – 1 - State.

.....

CORAM : V.L.ACHLIYA, J.

DATE : 1st AUGUST, 2017

.....

ORDER :

1. The applicant herein has challenged the order dated 29/05/2017 passed in Special Case No. 5/2016 by Additional Sessions Judge/Special Judge, Shrirampur, District Ahmednagar. By the impugned order, learned Special Judge has rejected the application seeking discharge filed by the accused.

2. Heard learned counsel for the applicant and A.P.P. for respondent No. 1 – State and perused the

impugned order.

3. Before advertizing to appreciate the submissions advanced, it is necessary to consider the few facts leading to filing of the application. On 04/05/2016, one Shaikh Juned Kalim, the complainant in the case visited the office of Anti-corruption Bureau and lodged complaint to the effect that the applicant/accused had demanded amount of Rs. 1,50,000/- from him to get released the payment of bills of work carried out by him as a Road Contractor. In the complaint lodged, the complainant alleged that as a Civil Contractor he was assigned the work of construction of road from Gondegaon – Undirgaon – Khanapur as well as Nimgaon Kahin – Naur road. He had completed the work of Gondegaon – Undirgaon – Khanapur road. Towards the work of Gondegaon – Undirgaon – Khanapur road, he has received Rs. 12,58,264/-. The amount of Rs. 7,50,000/- was due towards said work. The outstanding amount of Rs. 7,50,000/- was not released as measurements were not recorded in the measurement book. The applicant who was then working as Sectional Engineer, demanded amount of Rs. 1,50,000/- for recording the measurements so as to get released the balance amount of Rs. 7,50,000/-. He told the

complainant that unless said amount is paid to him, he will not get the balance amount of Rs. 7,50,000/- and, therefore, complainant lodged report with A.C.B.

4. On the basis of the complaint lodged by the complainant, the trap was laid and accused was caught while accepted the amount of Rs. 1,50,000/-. On conclusion of the investigation, charge sheet was prepared and filed in the Court of Additional Sessions Judge, Shrirampur, District Ahmednagar to prosecute him for committing offence u/s 7 and 13 (d) r/w sec. 13 (2) of Prevention of Corruption Act.

5. The applicant/accused appeared in the matter and filed application u/s 227 of the Code of Criminal Procedure seeking discharge. He has filed certain documents, which he has obtained under the Right to Information Act and got produced certain documents from Zilla Parishad. He has contended that there is no case to proceed against him for offence u/s 7 as well section 13 (1) (d) r/w sec. 13 (2) of Prevention of Corruption Act, 1988 and claimed to be discharged. Learned Additional Sessions Judge has rejected the application vide order dated 29/05/2017. Being aggrieved, the petitioner has

filed this petition.

6. Mr. Sapkal, learned counsel for the applicant strenuously contended that the documents as produced by the accused if considered, then it make out no case to proceed against the accused. He submits that as per the complaint filed by the complainant, the amount of Rs. 1,50,000/- was demanded by the applicant/accused to record the measurements of the work carried out by the complainant of Gondegaon – Undirgaon – Khanapur road. It is contended that there is no evidence to show that the amount of bribe was accepted by the applicant/accused. He submits that the trap panchanama reflects that the alleged amount of bribe was found to be lying kept in the bag on the chair, where accused was sitting. No traces of Anthracene powder were detected on his hand to show that the amount was accepted by him. He further submits that the petitioner has obtained certain documents under Right to Information Act. So also he got produced certain documents relating to work assigned to the complainant. Documents which the applicant has procured and placed before the Court, clearly reflects that the measurements in respect of the said work was already recorded, the bill was prepared, approved and cheque was also drawn prior to

31/03/2016 so as to release the amount towards said work. He, therefore, contended that if the measurement were already recorded in measurement book and cheque was also drawn prior to 31/03/2016, there was no reason for the accused to demand Rs. 1,50,000/- for recording the measurements so as to facilitate the preparation of bill of outstanding amount. In this back-ground, it is argued that no case is made out against the applicant/accused to prosecute him u/s 7, 13 (1) (d) and 13 (2) of Prevention of Corruption Act and urge to discharge the accused.

7. On the other hand, learned A.P.P. supported the order passed by the trial Court and submitted that the order passed by the trial Court is well reasoned and calls for no interference in exercise of writ jurisdiction. He submits that the documents as relied by the accused, at the most, can be used in defence of the accused during the trial and can not be taken into consideration while dealing with discharge application. He submits that the applicant was suspended on 16/06/2016. On suspension the charge of post held by the applicant was given to one Bhalerao, the Sectional Engineer. If the charge was given to Bhalerao on 16/06/2016, then there was no reason for him to take measurement and record entry in the

measurement book before 16/06/2016. He, therefore, submits that the documents as relied by the accused can not be taken into consideration while dealing with the application seeking discharge. The genuineness, authenticity and correctness of such document will have to be tested during the trial. He, therefore, urged to reject the application.

8. In order to appreciate the submissions advanced, I have perused the order passed by the trial Court. While dealing with an application seeking discharge, the Court is not expected to hold detailed enquiry and to weigh the material to arrive at a conclusion as to whether the case will result into acquittal or conviction. The application seeking discharge is required to be examined within a limited sphere as to whether the evidence gathered by prosecution and placed in the form of charge sheet against the accused is sufficient to proceed against accused. After going through such evidence if Court comes to conclusion that no sufficient ground exists to proceed against the accused, then only the Court is expected to discharge the accused. While dealing with application seeking discharge, the Court has to examine the evidence collected by the prosecution from the view

point that the material gathered as evidence make out a case sufficient to proceed against the accused. If the Court finds that if entire evidence collected by the prosecution case goes unchallenged, unrebutted; still no conviction can be warranted, then in such case the Court is expected to discharge the accused. It is quite settled position in law that even grave suspicion is enough to proceed and frame the charge against the accused. The evidence as relied by the prosecution must be of a nature that no reasonable person would come to the conclusion on the basis of such evidence that there is a case to sustain the charge against the accused. It is also settled position in law that while dealing with application seeking discharge, the Court is expected to confine the enquiry as to material gathered by the prosecution. In appropriate case, the Court may look into the evidence in the form of documents placed by the defence, if the documents so produced, their genuineness and authenticity is beyond doubt and can be safely acted without asking for proof of its genuineness and contents.

9. Thus, keeping in mind the broad principles to be borne in mind while dealing with an application for discharge, I have examined the impugned order passed by

the trial Court. In my view, no case is made out to call for interference with the order passed by the trial Court in exercise of writ jurisdiction under Article 27 of Constitution of India as well as u/s 482 of Cr.P.C. There is sufficient evidence to proceed against the accused. It is pertinent to note that the complaint alleging demand of bribe of Rs. 1,50,000/- was filed on 04/05/2016. After recording complaint, the official from the Anti-corruption Bureau verified the complaint and later-on laid the trap. The conversation between the complainant and accused has been recorded. The accused present in his office asked the complainant to keep the bribe amount in the black colour bag lying kept over the chair. The accused was caught with bribe amount in his office. Thus, it is a case of prosecution that accused was found caught while accepted the bribe amount. The applicant/accused has secured certain documents under Right to Information Act. It is the contention of accused that the measurements in respect of the work carried by the complainant was already carried out and bill in respect of that was also prepared, approved and cheque was drawn prior to 31/03/2016. In this view, no work was pending with the applicant/accused so as to make demand of Rs. 1,50,000/-. In support of this contention, the accused is

relying upon certain documents. Learned Judge of the trial Court has considered those documents and dealt the aspect in detail and observed as under :

" The perusal of the record shows that payment vouchers came to be prepared, showing the issuance of a cheque dated 31/03/2016 to the informant, duly acknowledged by the informant by putting his own signatures thereon. The informant reported to the Anti Corruption Bureau on 04/05/2016, means after one month and four days therefrom about the demand for bribe. The accused appears to have been suspended from his service with effect from 16/06/2016, whereby he was directed to hand over his charge to one Bhalerao. It is not in dispute that the subsequent documents (MB) regarding the payment of the bill amount to the informant on 31/03/2016, were prepared by Bhalerao. It is surprising, as to how Bhalerao could prepare those documents (M.B.) for releasing the bill to the informant 2 ½ months before the receipt of the charge itself. The said fact ipso facto shows that the said MB was prepared subsequent to the trap. If the accused himself was holding the charge

on 31/03/2016, the MB must have been prepared by the accused himself and not by Bhalerao, by any stretch of imaginations, if at all the accused intended to release the payment of bill to the informant. Mere signature of the informant, as regards the receipt of the cheque dated 31/03/2016, does not ipso facto show that the cheque was received by him on 31/03/2016. One can not lose sight of the factual scenario, as regards the possibility of issuance of back dated cheque, in order to avoid the lapse of funds for the particular financial year by the concerned Department. In the above circumstances, there does not appear to be any substance in the main stand taken by the accused for his discharge, that is, the ground that there was no question of demand if the payment itself was released. The statement given by the accused before the concerned officer of Anti-corruption Bureau on the date of effecting the road, that is, on 04/05/2016 is vital in displacing the stand taken by him, as he himself mentioned therein that the bill was not paid as the work done by the informant was incomplete. This statement by the accused himself speaks in volumes that the stand taken by him now, as regards the releasing of the

payment, is afterthought ”.

10. Thus, the order as referred above passed by the trial Court is well reasoned and speaking order. In absence of any illegality and impropriety, the order passed by the trial Court calls for no interference in exercise of powers u/s 482 of Cr.P.C. The documents as relied by the accused at the most can be used in defence of the accused. Such documents can not be relied to seek discharge in the case. There is serious doubt about the authenticity and genuineness of the documents. The possibility of such documents being created in back date can not be ruled out. It is rightly pointed out by learned A.P.P. that if charge was handed over to Bhalerao on 16/06/2016, the measurement could not have been recorded by him prior to 16/06/2016. Recording measurements prior to 31/03/2016 itself raises serious doubt as to overall documents referred and relied by the learned counsel in support of discharge. In the case of ***Sheoraj Singh Ahlawat & Ors. Vs. State of Uttar Pradesh & Anr. reported in (2013) 11 Supreme Court Cases 476***, the Apex Court has considered the scope of exercise of powers u/s 227,228 and 239 of Cr.P.C. as to framing of charge as well as discharge of

accused. It is observed that while framing the charge, the Court is required to evaluate materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At the stage of framing of charge, the Court is not required to go deep into probative value of the materials on record. The Court is required only to evaluate whether there is ground for presuming that accused had committed offence. Adequacy and sufficiency of evidence to convict the accused can not be a criteria to be borne in mind while dealing with framing of charge as well as application seeking discharge. It is further observed that existence of grave suspicion against the accused is sufficient to frame the charge against the accused. The accused is entitled to urge his contention only on material submitted by prosecution. He is not entitled to produce any material nor the Court is required to consider such material. It is further observed that the Court has to consider the broad probabilities of the case, total effect of evidence and documents produced before it.

11. The genuineness of the documents relied can only be tested during the course of trial. While dealing

with the case, the Court will also required to take into account that in spite of measurement being already recorded under the pretext of handing over the cheque, the accused had demanded the amount. The documents as relied by the accused at the most can be used in defence of accused. I am, therefore, not inclined to entertain the application.

12. In the light of the discussion made above, I am not inclined to invoke the powers u/s 482 of Code of Criminal Procedure to quash proceeding against the applicant. In my view, no case of abuse of process of law as well as exercise of powers to meet the ends of justice is made out by the applicant. The application moved is devoid of merit and liable to be rejected. Accordingly, the application is rejected.

[V.L.ACHLIYA, J.]