

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

CRIMINAL WRIT PETITION NO. 883 OF 2017

Shilpa Mahadeorao Sasane
Age: 27 years, Occu.: Service,
R/o At post Gandhi, Tal. Georai,
Dist. Beed.

..PETITIONER

VERSUS

State of Maharashtra
Through Incharge Police Station Officer,
Anti Corruption Bureau, Beed.

..RESPONDENT

....

Mr. Prasanna Dadpe, Advocate h/f Mr. P.R. Katneshwarkar, Advocate for
petitioner.
Mr. K.S. Patil, A.P.P. for respondent.

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**CORAM : V.L. ACHLIYA, J.
DATED : 19th SEPTEMBER, 2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties heard finally at the stage of admission.

2. By the present petition filed under Section 227 of the Constitution of India, the petitioner has challenged the order dated 13th June, 2017 passed by the learned Additional Sessions Judge / Special

Judge, Beed in Special (ACB) Case No. 15 of 2014. By the impugned order, the learned Special Judge, Beed has rejected the application Exhibit 25 filed by the petitioner – accused seeking second copy of the compact disk produced by the prosecution as an alleged conversation between the complainant and the accused. From the perusal of the order it reveals that the application was rejected mainly for the reason that the Court has formed opinion that in the process of preparing compact disk from the memory card, there is likelihood of damage being caused to the original recording in the memory card.

3. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail. The petitioner is facing trial for committing offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The prosecution has filed the charge-sheet alongwith the memory card wherein the conversation between the complainant and the petitioner – accused is claimed to be recorded. The transcript of the conversation has been provided to the petitioner - accused. The petitioner – accused has insisted for providing the copy of the compact disk of audio recording of the conversation recorded in the memory card for the purpose of preparing his defense. By referring Section 207 of the Code of Criminal

Procedure, the learned Counsel for the petitioner contended that it is a statutory obligation on the part of the prosecution to provide the entire copy of the charge-sheet which includes any other document forming the part of charge-sheet i.e. the report filed under Section 173 of the Code of Criminal Procedure. The learned Counsel submits that as per the provision of Section 207, the accused is entitled to get the copy of the conversation recorded between the complainant and the petitioner – accused. The learned A.P.P. submits that present application is filed with an intention to protract the hearing of the case. He submits that the charge-sheet is filed in the year 2014 and under the pretext of this application, the petitioner – accused is protracting the hearing.

4. In order to ascertain as to whether the copy of the compact disk can be supplied to the petitioner, the report of the Investigating Officer was called in the matter. Vide report dated 23rd August, 2017, the Investigating Officer has reported that the memory card in which the alleged conversation was recorded has been deposited with the Sessions Court, Beed and as such, expressed inability to provide the copy of the same. Since the learned Judge has observed in the impugned order that the memory card may likely to be damaged in the process of making compact disk, but the same was not found to be supported with the

opinion of expert, report was called from the learned Special Judge. The report dated 12th September, 2017 reads as under:-

“On 13.8.2014 Investigation officer has filed final report before the Sessions Court at Beed. On perusal of the charge-sheet it shows that two memory cards first is conversation during pre-trap panchnama and second is conversation during trap alongwith other memory card, which consist of voice sample of accused, were sent to FSL Kalina, Mumbai. Thus, alongwith charge-sheet the I.O. has not provided additional copy of CD. On 14.2.2017 I.O. has deposited three sealed packets alongwith examination report received from FSL Kalina Mumbai in this Court which consist of three memory cards. Record does not consist opinion of any expert as to likelihood of damage to the original memory card if its copy is prepared.

I have consulted Shri Pathak, who is working as District System Administrator in Computer Section District Court, Beed as to preparing copy of CD from memory card. Accordingly, there is no impediment in preparing copy of CD from memory card.

In the light of this, copy of CD can be prepared from the memory card.”

5. In view of the report received in the matter, it is not necessary to adjudge the legality of the impugned order on merit. In view of the report received that the copy can be prepared from the memory card, the

petition can be conveniently disposed off by setting aside the order and directing the Trial Court to decide the application afresh in the light of the report submitted.

6. Accordingly, the impugned order is set aside. The learned Special Judge, Beed is directed to decide the application Exhibit 35 afresh by giving opportunity of hearing to the parties and pass appropriate order in the light of the report dated 12th September, 2017. In order to address the contention raised that the petitioner - accused is protracting the hearing of the case, under the guise of filing such application, the trial Court is directed to expedite the hearing of the case. The petitioner – accused is directed to co-operate the Trial Court in expeditious disposal of the case. In the result, petition is allowed. Rule made absolute in the above terms.

(V. L. ACHLIYA, J.)

SSD