IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.507 OF 2016

PRAVIN RAMAKANT AWAD)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Harshad Bhadbhade, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th FEBRUARY 2017.

ORAL ORDER :

1 This is a revision petition challenging the order passed by the learned 2nd Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, Thane, below application at Exhibit 18 filed by the revision petitioner thereby rejecting the said application for discharge on 9th March 2016. By the said

application, the revision petitioner / accused no.1 Pravin Awad, Inspector of Motor Vehicle, had sought discharge from the Special Case No.39 of 2014 for offences punishable under Sections 7, 8, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned advocate appearing for the revision petitioner / accused no.1 Pravin Avhad. By taking me through the FIR dated 4th November 2011 lodged by Police Inspector of the Anti Corruption Bureau (ACB), Thane, the learned advocate vehemently argued that though this FIR came to be lodged after all necessary formalities of recording pre-trap and post-trap panchnamas, the FIR is not naming the present revision petitioner as an accused. Rather, FIR mentions name of another officer of the RTO, namely, Amol Pawar as an accused. My attention is drawn to the averments in the FIR that the demand for illegal gratification was for the benefit of accused no.2 Ajay Chougule and his officer named Amol Pawar. The learned advocate further argued that the FIR shows recitals that accused no.3 Yogesh @ Ramkrushna Tonpe

informed the officer of the ACB that the illegal gratification was accepted for accused no.2 Ajay Chougule and accused no.3 Amol Pawar. The learned advocate further argued that accused no.2 Ajay Chougule is infact hawaldar of Amol Pawar, Inspector of the Motor Vehicle. The learned advocate by taking me through verification panchnama dated 15th October 2011 argued that recitals in this contemporaneous document reveals that infact Amol Pawar was deliberately refusing to have detailed discussion regarding demand of illegal gratification. Therefore, in submission of the learned advocate for the revision petitioner, there was infact no demand of illegal gratification by the revision petitioner / accused no.1 Pravin Avhad.

3 By taking me through the trap panchnama dated 3rd November 2011, it is argued that recitals in this trap panchnama shows that there was infact inquiry from accused no.3 Yogesh @ Ramkrushna Tonpe by the Investigator and accused no.3 Yogesh had informed the ACB that the amount of illegal gratification amounting to Rs.12,500/- was received for and on behalf of Amol

Pawar and accused no.2 Ajay Chougule. This trap panchnama, according to the learned advocate for the revision petitioner, makes a categorical disclosure that informant Dilip Patil, Police Inspector of ACB, came to the conclusion that public servant named Amol Pawar had received illegal gratification through accused no.3 Yogesh @ Ramkrushna Tonpe. With this, the learned advocate for the applicant submitted that as all papers of investigation are naming Amol Pawar as a person who had demanded and accepted illegal gratification through accused no.3 Yogesh @ Ramkrushna Tonpe, the revision petitioner deserves discharge. He submitted that, infact, accused no.2 Ajay Chougule is hawaldar of Amol Pawar, Inspector of Motor Vehicle. It is further argued that the transcript of the conversation is not admissible in evidence as it is not supported by a certificate required under the Information Technology Act. It is further argued that even if the said transcript is considered, then also, it does not reflect any ground to proceed against the revision petitioner. The accused was, infact, more than 150 kms. away.

4 The learned APP opposed the petition by contending that panch witnesses have identified the revision petitioner as a person who made demand of illegal gratification and there are several grounds for proceeding against the revision petitioner.

5 I have carefully considered the rival submissions and also perused the entire charge-sheet filed by the ACB against accused persons including the present revision petitioner.

6 It is the case of prosecution that complainant Rajesh Amar Bahadur Singh is proprietor of Khusboo Traders and deals with supply of building materials. He owns five trucks. One of his trucks came to be intercepted by the flying squad of the RTO on 29th September 2011. Complainant Rajesh Singh had talk with accused no.2 Ajay Chougule on the cell phone of his driver and accordingly, he visited Kanher Phata where an Ambassador car bearing Registration No.MH 04 1111 was standing. A uniformed person having name plate as Ajay was standing near that car and a uniformed Officer was sitting inside that car. Complainant

Rajesh Singh then inquired about the matter from the uniformed person having name plate as Ajay. He is accused no.2 Ajay Chougule. It is the case of prosecution that accused no.2 Ajau Chougule informed the complainant that if he opens an account of the RTO and pays an amount of Rs.2500/- per month, per truck, to accused no.3 Yogesh @ Ramkrushna Tonpe, then no action would be taken against his trucks. On 30th September 2011, complainant Rajesh Singh contacted accused no.2 Ajay Chougule and accused no.3 Yogesh @ Ramkrushna Tonpe, when the demand was reiterated. On 1st October 2011, complainant Rajesh Singh paid an amount of Rs.12500/- to accused no.3 Yogesh @ Ramkrushna Tonpe in order to secure that no action against his five trucks shall be taken in future by the RTO. It appears that still action of detaining one truck due to non-payment of Road Tax was taken by the RTO and at that time, the complainant was also charged with overloading the truck. The complainant protested and got refund of his amount of Rs.12,500/-. This resulted in detention of one more truck of the complainant and then the complainant again succumbed to the pressure. According to the prosecution case, then, again on 12th October 2011, complainant Rajesh Singh paid an amount of Rs.12,500/- to accused no.3 Yogesh @ Ramkrushna Tonpe. He then complained the fact of demand of illegal gratification to the ACB.

7 According to the prosecution case, on 14th October 2011 and 15th October 2011, the ACB conducted verification of demand of illegal gratification by accused persons and found that there was a demand of Rs.12,500/- by accused persons from the complainant in order not to take any action against the trucks owned by the complainant. Ultimately, on 3rd November 2011, a trap was laid and accused no.3 Yogesh @ Ramkrushna Tonpe was apprehended red handed while accepting an amount of Rs.12,500/- at the RTO Office. This has resulted in registration of FIR bearing Crime No.II147/11 under Sections 7, 8, 13(1)(d) read with 13(2) of the Prevention of Corruption Act with Wagle Estate Police Station, Thane. The FIR, undisputedly, shows name of accused Amol Pawar as one of the accused persons and is not disclosing the name of the present revision petitioner.

8 According to prosecution case, during the course of investigation, it transpired that, infact, the demand of illegal gratification and acceptance thereof was not at the instance of Amol Pawar but it was at the instance of present revision petitioner / accused no.1 / Pravin Awad. The charge-sheet reflects that after registration of the FIR, the Investigating Officer had called for documents from the RTO and on receiving all the documents from the RTO, the Investigator came to the conclusion that on 14th October 2011, at the time of verification panchnama, the officer who was contacted by complainant Rajesh Singh, was not Amol Pawar but it was, infact, revision petitioner /accused no.1 / Pravin Awad.

9 It, thus, becomes necessary to peruse verification panchnama proceedings conducted by the ACB in order to verify whether there was demand of illegal gratification by accused persons. The verification panchnama dated 14th October 2011 shows that complainant Rajesh Singh had initially contacted

accused no.3 Yogesh @ Ramkrushna Tonpe. At that time, their conversation was recorded in the digital voice recorder and verification panchnama contains transcript of this conversation. The transcript of the recorded conversation between complainant Rajesh Singh and accused no.3 Yogesh @ Ramkrushna Tonpe reflects that Yogesh has informed the complainant that he should pay an amount of Rs.2,500/- per month, per truck totalling to Rs.12,500/- for opening an account of the RTO in order to see that no action shall be taken against his trucks by the RTO. Accused no.3 Yogesh @ Ramkrushna Tonpe had given cell phone number of accused no.2 Ajay Chougule to complainant Rajesh Singh as is seen from the recorded conversation. Then there is conversation between the complainant and accused no.2 Ajay Chougule. This conversation reflects demand of illegal gratification by accused no.2 Ajay Chougule for and on behalf of his officer. Thereafter, as seen from the verification panchnama, complainant Rajesh Singh had again talks with accused no.3 Yogesh @ Ramkrushna Tonpe where there is again reiteration of illegal gratification, for and on behalf of “Saheb.” Recorded conversation shows that accused no.3 Yogesh @ Ramkrushna Tonpe had categorically informed complainant Rajesh Singh that the amount will be accepted only if “Saheb” agrees for acceptance of that amount. Accused no.3 Yogesh then directed complainant Rajesh Singh to contact “Saheb” of the RTO.

10 Thereafter, as seen from the verification panchnama, complainant Rajesh Singh contacted accused no.2 Ajay Chougule in order to enable him to meet “Saheb” of the RTO. He was told by accused no.2 Ajay Chougule to go to Kanher Phata and meet the officer having Indico Car bearing No.999. He told name of the officer as Amol Pawar. Then, as seen from the verification panchnama, complainant Rajesh Singh contacted the officer having a motor car bearing registration no.MH O1 ZA 999. He had conversation with the officer having that car. Recorded conversation between them reflected from the verification panchnama goes to show that the officer ascertained from the complainant Rajesh Singh as to how many trucks he is having and

then had a detailed conversation with the complainant Rajesh Singh. Then the officer had asked the complainant that the complainant should inform accused no.3 Yogesh to meet him on the next day in order to decide the further course of action. During the course of the conversation, the complainant informed the officer of the RTO that he had kept his trucks idle and whether he can ply his trucks. Upon that, the officer of the RTO told the complainant that he can ply three of his five trucks. All these happened with a presumption that the officer who was talking is Amol Pawar as name of Amol Pawar was stated by the other accused persons. Then the trap was laid and during the course of that trap, accused no.3 Yogesh @ Ramkrushna Tonpe had accepted the amount of illegal gratification to the tune of Rs.12,500/- on 3rd November 2011 in the office of the RTO.

11 During the course of investigation, as noted above, the Investigator had called official documents from the office of the RTO. Those documents are annexed with the charge-sheet. The Office Order No.626/2011 filed with the charge-sheet shows that

the revision petitioner was incharge of flying squad no.5 with other officers with him. The documents showing names of the officers who were incharge of Motor Car bearing registration no.999 were also called from the RTO. Those documents show that at the relevant time, the car was with the revision petitioner / accused no.1. The Investigating Officer then recorded statement of complainant Rajesh Singh as well as panch witness Pravin Dhurat, who were present at the time of proceeding of verification panchnama. They were shown photographs of the officers of the RTO. Witnesses confirmed that on the day of demand of illegal gratification, they had infact met revision petitioner / accused no.1 / Pravin Awad. With this, during the course of investigation, it is seen from the charge-sheet that name of the revision petitioner came to be added as an accused no.1.

12 We are considering the matter from the angle whether revision petitioner / accused is entitled for discharge and this court is not considering whether he is entitled for acquittal or not. The law on this aspect is crystallized and can be found in the

judgment of the Hon'ble Apex Court in the matter of **State of Tamil Nadu vs. N. Suresh Rajan & Ors.**[1] which reads thus :

> "We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption hat the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and

1 AIR 1982 SC (SUPP) 1982

not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of **Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171),** in which, after analyzing various decisions on the point, this Court endorsed the following view taken in **Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):**

> "11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a

> ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence." " .

13 Similarly, it is apposite to note that in the matter of **State of Maharashtra v. Priya Sharan Maharaj and Ors**.[2] the Hon'ble Apex Court has considered the factors which are required to be considered while examining the matter for deciding whether the accused is entitled for discharge. Paragraph 8 of that report can be reproduced and it reads thus :

> "8: The law on the subject is now well-settled, as pointed out in **Niranjan Singh Punjabi v. Jitendra Bijjaya, (1990) 4 SCC 76 : (AIR 1990 SC 1962)**, that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts

2 AIR 1997 SC 2041

emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

14 In a later decisions of the Hon'ble Supreme Court in the matter of **Dilawar Babu Kurane v. State of Maharashtra**[3] this is what is held by the Hon'ble Supreme Court in paragraph 12 of the report :

"12 Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is

3 AIR 2002 SC 564

that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15 It is, thus, clear that what is required to be considered by this court, at this stage, is whether there are or there are not sufficient grounds for proceeding against the accused. Power to sift and weigh the evidence can be exercised only for a limited purpose of finding out whether there is or there is no prima facie case against the accused and whether the material available on record creates a grave suspicion against the accused for commission of the offences alleged against him.

16 In the case in hand, if we peruse supplementary statement of the complainant as well as the shadow panch, then it becomes clear that they are categorical in stating that they had met the present revision petitioner at the time of the verification proceeding where demand of illegal gratification was made to them.

17 In this view of the matter, it cannot be said that there is no evidence against the revision petitioner to frame charge against him. The revision petition, as such, is devoid of merit and

it cannot be said that the impugned order of the learned trial court suffers from perversity or illegality. As such, the order :

i) The revision petition is dismissed.

(A. M. BADAR, J.)