IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1821 OF 2015

SAYYED MOHAMMED NAZIR NAQVI)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.R.R.Navik, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th SEPTEMBER 2017

<u>P.C.</u> :

1 Rule. Rule is made returnable forthwith. Heard by consent finally.

2 By this writ petition, petitioner / accused no.24 is challenging the order dated 25th February 2015 passed by the learned Special Judge under the Prevention of Corruption Act, Kalyan, on an application Exhibit 54 by which the petitioner / accused had claimed discharge from the offences vide Crime No.II-

46/2010 registered with Manpada Police Station for offences punishable under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act and under Sections 465, 466, 467, 468, 471, 474, 420, 120B read with 34 and 109 of the Indian Penal Code (IPC).

3 Heard the learned advocate appearing for the petitioner / accused. He argued that the learned trial court erred in rejecting the application for discharge moved by the petitioner / accused, though he was having protection as envisaged by Section 13 of the Notaries Act. By pressing the judgment in **Bramhadev R. Dube vs. State of Maharashtra and Another**[1] as well as the judgment in **Ayaz Ahamed Khan vs. The State of Maharashtra & Anr**.[2] by the Hon'ble Single Judges of this court, the learned advocate submitted that being a notary in the light of provisions of Section 13 of the Notaries Act, the learned trial court ought to have discharged the present petitioner / accused as his prosecution launched at the instance of Anti Corruption Bureau

1 Criminal Writ Petition No.1743 of 2013 dtd. 2nd September 2013

2 Criminal Writ Petition No.2817 of 2011 dtd. 23rd July 2012

(ACB) is barred by law. The learned advocate argued that being a notary and as the act complained of, is in discharge of functions as a notary by the petitioner / accused, the court can take cognizance of such offence only on complaint made by an officer authorized by either Central Government or State Government. Therefore, the learned trial court has no jurisdiction to try the case by taking cognizance of the offence. According to the learned advocate for the petitioner / accused, the petitioner has no concern with the crime in question and he has just notarized affidavits which came before him in discharge of his functions as a notary. At the most, it can be said that the petitioner was discharging his purported function as a notary public and therefore, he cannot be made liable for penal consequences.

4 The learned APP opposed the petition by contending that the petitioner / accused has notarized three affidavits which were on the stamp paper which was not in existence on the date on which those affidavits were notarized and he had not even taken entries of those affidavits in the statutory register.

Therefore, according to the learned APP, the act on the part of the petitioner / accused cannot be said to be in exercise or purported exercise of his functions as a notary under provisions of the Notaries Act of 1952.

5 I have carefully considered the rival submissions and also perused the impugned order of the learned court below as well as the charge-sheet made available.

6 According to the prosecution case, on 20th May 2010, co-accused Sunil Joshi, Executive Engineer, was apprehended while demanding and accepting illegal gratification of Rs.5 lakh which resulted in registration of Crime No.7 of 2010 against him. Subsequently, it was revealed that said co-accused Sunil Joshi and his family members have amassed assets disproportionate to their known source of income to the tune of Rs.2,75,81,315/-. Accordingly, Crime No.46 of 2010 dated 20th May 2010, which is subject matter of the instant application, came to be registered.

7 During investigation of this crime, it was revealed to the Investigator that the present revision petitioner / accused no.24 has notarized three forged agreements on the stamp papers which were not in existence on the day of notarizing those documents. He had aided the accused in commission of the crime by preparation of forged documents for wrongful gain. Therefore, he is also arrayed as an accused in the said crime.

8 Perusal of the charge-sheet reveals that on 10th May 2008, the petitioner / accused has attested an affidavit of co-accused Sameer Sudhakar Bagh which was on stamp paper of Rs.100/-. The stamp paper was having no.CB-699084. The affidavit was to the effect that the affiant had given an amount of Rs.2.50 lakh to Aniket Joshi – son of the main accused Sunil Joshi and Anita Joshi for his education in the field of aviation. Investigation revealed that this stamp paper was infact manufactured subsequent to 10th May 2008 and it was sold to the vendor on 1st August 2009.

9 The another document which is pressed in service by the prosecution against the present petitioner / accused is an affidavit on stamp paper of Rs.100/- showing that Rajaram Khare had given a cheque amounting to Rs.15 lakh for education in aviation to Aniket Joshi – son of main accused. This affidavit was notarized by the present petitioner / accused on 15th June 2008. Investigation revealed that this stamp paper was not in existence on 15th June 2008. It was released by the Security Press, Nashik, on 7th July 2009 and ultimately sold to Maharashtra Small Scale Development Corporation on 17th July 2009. Then it was sold to Simran & Co.

10 The third stamp paper of Rs.100/- was used again for swearing an affidavit disclosing that Smt.Manorama Babanrao Joshi had given Rs.5 lakh by cheque for education of Aniket Joshi. This affidavit is notarized by the petitioner / accused on 17th July 2008. The stamp paper used to scribe this affidavit was not in existence on that date. The said stamp paper was released by the Security Press on 7th July 2009 and ultimately, it was sold to the vendor on 1st August 2009.

11 To put in another words, the present petitioner / accused had attested affidavits back dated when even the stamp papers on which they were scribed were not available for sale in the market. This aspect will have to be considered in the background facts that these documents were used for justifying that there was no amassment of assets disproportionate to the known source of income by main accused Sunil Joshi and his family members who are co-accused in Crime No.46 of 2010. It is well settled that if there is grave suspicion coupled with some evidence in support thereof collected by the prosecution, then the accused cannot be discharged and he is required to face trial. Attesting the affidavits on stamp papers by putting the date on which those stamp papers were not even available for sale in market coupled with the fact that entry of those notarized documents was not taken in statutory register required to be maintained as per the Notaries Act 1952, does not allow me to hold that the act of the petitioner / accused is in exercise or purported exercise of his function under the said Act. The Notaries

Act, 1952, does not prescribe that it is a function of a notary public to forge or fabricate a document for using the same as genuine in order to aid an accused against whom serious allegations of amassment of wealth disproportionate to known source of income are there. Functions of notary public are prescribed in the Notaries Act as well as Rules framed thereunder. Section 8 of the Act deals with functions of notaries. Considering the functions assigned to the notaries, it is expected that those functions are required to be performed solemnly. In the case in hand, the charge is of criminal conspiracy. The documentary evidence shows that affidavits are attested back dated. Prima facie, this appears to have been done in order to aid main accused persons and to shield them from prosecution under the Prevention of Corruption Act. By no stretch of imagination it can be said that this act of notary falls under Section 8 of the Notaries Act, 1952, or in purported exercise of those functions.

12 In the matter of **Bramhadev R. Dube (supra)** the role of the accused was totally different. He had believed and trusted

an advocate who identified the deponent. Main accused in that case had prepared a false Power of Attorney purported to be executed by his brother. That Power of Attorney was executed before the petitioner therein, who was working as a Notary public. In the light of facts of that case, it was held that the act comes under purported exercise of functions and is not totally extraneous to the duties of a notary public. Similarly, in the case of **Ayaz Ahamed Khan (supra)** the matter proceeded on its own facts. The petitioner / accused, a notary public therein, had notarized the document in respect of owner of the plot but it was subsequently revealed that the concerned owner was abroad at the material time, when the document was purportedly notarized. This act was considered to be not traveling beyond the scope of notarizing the document without there being any personal involvement of the accused notary public. Such is not the case in hand.

13 In the result, I do not find any error of law committed by the lower court in rejecting the application for discharge. The

impugned order is a well reasoned order, considering the material collected by the prosecution.

14 In the result, the petition fails, and the same is dismissed.

15 Rule is accordingly discharged.

(A. M. BADAR, J.)