

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4002 OF 2016

Biroba Baburao Shelke

...Petitioner

Versus

The State of Maharashtra,
Anti Corruption Bureau, Mumbai

...Respondent

.....

Mr. Ajit M. Savagave for the Petitioner.

Mr. S.R. Shinde, APP for the Respondent -State.

Mr. Ajay S. Sindhkar, ACP, ACB-Mumbai officer present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2017.

P.C.:-

Rule. Rule is made returnable forthwith. Respondent waives service. By consent of the parties, matter is taken up for final hearing.

2. The Petitioner, who was accused in ACB Special Case No.23 of 2012 has challenged the order dated 6th April, 2016 whereby the learned Special Judge has dismissed the application filed for return of the cash property of Rs.2,00,000/- handed over by him to the investigating agency (ACB) for laying a trap in Crime No.11 of 2011.

3. Heard Mr. Ajit M. Savagave, the learned counsel for the Petitioner and Mr. S.R. Shinde, the learned APP for the Respondent -State. Perused the records. The learned APP has placed on record report dated 11th October, 2017, which is taken on record and marked 'x' for identification.

4. The records reveal that pursuant to the report lodged by the Petitioner herein crime was registered against one Ramlingam Mali for offence punishable under Section 8 r/w. Section 12 of the Prevention of Corruption Act, 1988. The Petitioner had alleged that said Ramlingam Mali, President of Nursing Council had demanded bribe of Rs.2,00,000/- for issuing license to run Nursing School. The Petitioner had handed over cash of Rs.2,00,000/- to ACB Cell for laying the trap. The trap failed and hence, no charge sheet was filed against Ramlingam Mali. Subsequently, the Petitioner and another co-accused Vijay Shinde were prosecuted for making false accusation against said Ramlingam Mali. By order dated 19th December, 2015, the Petitioner was discharged of the said offence. By another order dated 19th December, 2015 the learned Special Judge held that though the accused Vijay Shinde was absconding, there was in fact no material to proceed against him and hence disposed of the entire proceedings.

5. Upon disposal of the said Special Case No.23 of 2012 the Petitioner filed an application before the Special Court for return of Rs.2,00,000/- which were produced before the ACB for laying the trap against Ramlingam Mali. The learned Special Judge dismissed the application mainly on the ground that one of the accused is absconding and that the State also intends filing an appeal against the discharge orders.

6. It is to be noted that the learned Special Judge by order dated 19th December, 2015 had already closed the proceedings as against the absconding accused No.3 by holding that there is no sufficient material to convict the absconding accused No.3. Hence, the learned Special Judge was not justified in dismissing the application on the ground that the co-accused was absconding.

7. It is also pertinent to note that the amount of Rs.2,00,000/- was admittedly handed over by the Petitioner to ACB-Mumbai for the purpose of laying trap against Ramlingam Mali. Said trap has failed and said Ramlingam Mali has not been prosecuted. Furthermore, the Applicant has been discharged by order dated 19.12.2015 and the said

discharge order has not been challenged. In view of the above facts, the Petitioner was entitled to receive the said amount, which was handed over by him to ACB-Mumbai.

8. Considering the facts and circumstances, the impugned order cannot be sustained and is hereby quashed and set aside. The Respondent is directed to return the amount of Rs.2,00,000/- to the Petitioner upon verifying his identity.

9. The writ petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)