

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

CRIMINAL APPLICATION NO.3023 OF 2017

Satish Balasaheb Kelgandre
Age : 42 years, Occu : Service,
R/o Prabhukunj, Opp. Kohinoor
Mangal Karyalaya, Gulmohar Road,
Ahmednagar.

... **Applicant.**

Versus

1. The State of Maharashtra
Topkhana Police Station,
Ahmednagar, Dist. Ahmednagar.
2. Irfan Gulab Shaikh,
Age 45 years, Occu : Service,
As Deputy Superintendent of
Anti Corruption Bureau,
Central Administrative Building,
Opp. T.V.Centre, Savedi,
Ahmednagar.
3. Vinayak Dadasaheb Jondhale,
R/o Kokangaon, Sangamner,
District Ahmednagar.

... **Respondents**

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Mr. V.S.Bedre, Advocate for Applicant
Mr. S.P.Deshmukh, APP for Respondent No.1-State
Mr. R.K.Temkar, Advocate for Respondent No.3

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**CORAM : S.S.SHINDE, J.
MANGESH S. PATIL, J.**

**RESERVED ON : 22nd November 2017.
PRONOUNCED ON : 01st March 2018.**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. This is an application under Section 482 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') for quashing and setting aside Crime No.II-176 of 2015 registered with Tophkhana Police Station, District Ahmednagar for the offences punishable under Sections 7 and 15 of the Prevention of Corruption Act, 1988.

3. Shortly stated the prosecution case as can be made out from the FIR is to the effect that the applicant was serving as a Quality Control Inspector in the office of District Superintendent of Agricultural, Ahmednagar. Respondent No.3 was a Regional Manager of a private company by name F.M.C. India Pvt. Ltd., Bangalore which manufactures pesticides, at its Branch at Sangamner. The company was manufacturing and

selling pesticide by commercial name 'Dermet'. It is alleged that under the pretext that the pesticide was not being dispensed according to the norms, the applicant allegedly demanded an amount of Rs.15,000/- by way of gratification for not obstructing its distribution and sale in Ahmednagar District. Respondent No.3 contacted Respondent No.2 who was the Deputy Superintendent of Anti Corruption Bureau posted at Ahmednagar.

4. It is then alleged that on 26.08.2015 Respondent No.2 arranged for a panchanama for verification of the demand. He handed over a voice recorder to Respondent No.3 and in presence of panch the former contacted the applicant and it was confirmed that the applicant had demanded the bribe of Rs.15,000/- but after some bargaining he had agreed to receive Rs.8,000/- by way of gratification.

5. It is then alleged that after such verification process, Respondent No.2 arranged for a trap on the same day that is 26.08.2015 between 12.10 noon to 15.00 hours. The tainted currency notes were given to

Respondent No.3 in presence of panchas and an attempt was made by Respondent No.3 and the panch to contact the applicant. However, the trap had to be aborted since the applicant did not accept the tainted currency notes.

6. It is then alleged that on 27.08.2015 again an inquiry was made by Respondent No.2 with Respondent No.3 as to if the applicant was ready to accept the money. However, Respondent No.3 informed him that the applicant was not accepting money.

7. Lastly it is alleged that on 21.10.2015 again Respondent No.2 called upon Respondent no.3 and again confirmed whether the applicant was demanding the bribe. But the latter told him that no such demand was made by the applicant during the period 28.08.2015 and 21.10.2015. A complaint of Respondent No.3 was then recorded. The offence was registered as mentioned herein above. The applicant was arrested and this is how he is before this Court praying for quashment of the crime.

8. The learned advocate for the applicant vehemently submitted that accepting the allegations in the complaint at their face value, necessary ingredients for constituting the offences punishable under Sections 7 and 15 cannot be made out. There was no attempt made by the applicant to accept the money. Without registering the offence the Investigating Officer Respondent No.2 had proceeded to conduct verification of the alleged demand and no such inquiry / investigation prior to the registration is permissible in law. Therefore whatever conversation that was recorded to substantiate the allegation of demand will have to be ignored. Once it is ignored, there remains nothing to prima facie substantiate the allegation of the applicant having made any demand for gratification or had made any attempt to receive it. The learned advocate also referred to the decision in the case of ***Lalita Kumari Vs. Government of U.P. and others ; [2013 AIR SCW 6386]*** and submitted that such preliminary inquiry has no basis in the Cr.P.C. and the State laws may permit

the Investigating Officer in a suitable cases to hold it independently to verify prima facie the genuineness or otherwise of the allegations being made by the informant. In any event it is only the investigation that is carried out post registration of the crime that would matter. Thus, according to the learned advocate, this is a fit case to quash the crime.

9. The learned advocate for Respondent No.3 and the learned APP strongly opposed the application. They submitted that there is a prima facie material to establish that the applicant being a public servant had made an attempt to receive money by way of gratification by raising the demand albeit he subsequently did not accept the money. The fact remains that apart from the recorded conversation, which would only be a corroborative piece of evidence, the version of Respondent No.3 and the panch would be sufficient to prove that the applicant was making a demand for gratification. Therefore, the discussion as to if Respondent No.2, Investigating Officer was justified in

holding the process for verification of the demand is only academic. The primary evidence would be in the form of testimonies of Respondent No.3 informant and the panch. If they stand to their original version that would be sufficient to conclude at the trial that the applicant had indeed made a demand for gratification. The learned APP and the learned advocate would submit that the necessary ingredients for constituting an offence punishable under Section 15 read with Section 7 of the Prevention of the Corruption Act can easily be made out from the FIR and it would not be proper to quash the crime at the threshold.

10. We have carefully considered the rival submissions of the learned advocates and the learned APP. We have also carefully gone through the papers of the investigation. It is at the outset necessary to note as to what constitutes an offence punishable under Section 15 which reads thus :

“15. Punishment for attempt. – Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may

extend to three years and with fine.”

Obviously one needs to turn to Section 13 and the relevant portion reads thus :

“13. Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) ;

(b) ;

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) ;

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven year and shall also be liable to fine.

11. A conjoint reading of Section 13 and 15 (supra) would reveal that it is not that every attempt towards commission of an offence punishable under the Prevention of Corruption Act has been made punishable under Section 15. It is only the attempt made towards commission of the offences as defined under clause (c) and (d) of Sub-section 1 of Section 13 which are made so punishable. In other words any attempt towards an act which would constitute an offence punishable under Section 7 that is public servant taking gratification other than legal remuneration in respect of an official act, the offence punishable under Section 8 that is taking gratification in order by correct or illegal means to influence public servant, similarly, the offences as defined under Sections 9, 10 etc. are not punishable under Section 15. Meaning thereby that if a person in a given case makes an attempt to commit an offence which is defined under Sections 7 to 11, such attempt is not punishable under Section 15. For that matter even the offences which are defined under clause (a), (b) and (e) of Sub-section 1 of Section 13 are also not made

punishable under Section 15. It is only the offences which are covered by clause (c) and (d) of Sub-section 1 of Section 13, even if there is an attempt to commit such offence is made punishable under Section 15.

12. Since in the matter in hand the applicant being a public servant has made an attempt to obtain a valuable thing or pecuniary advantage by indulging in corrupt or illegal activity by abusing his position as a Quality Control Officer in the office of Agricultural Superintendent, prima facie he has made an attempt to commit an offence as defined under clause (d) of Sub-section 1 of Section 13 which is punishable under Section 15.

13. Coming to the argument of the learned advocate for the applicant that the alleged demand which has been verified by a tape recorded conversation precedes the registration of the offence, suffice for the purpose to observe that such recording of conversation would only corroborate the primary evidence in the form of the information furnished by the informant and as verified

by the panchas about the applicant having raised a demand for gratification. Thus the primary evidence would be in the form of the testimony of the informant himself to bring home his allegations regarding the alleged demand. In our considered view, such a procedure does not violate the directions of the Supreme Court in the case of Lalita Kumari (supra).

14. In view of all the above reasons, in our considered view, when there is a prima facie case showing commission of the offence punishable under Section 15 read with Section 13(1)(d) of Prevention of Corruption Act, 1988, this is not a fit case to quash the FIR and the crime at the threshold.

15. The application is rejected. The rule is discharged accordingly.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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vmk/-