

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

CRIMINAL REVISION APPLICATION NO. 122 OF 2018

Kishor Khanchand Wadhwani	... Applicant
Vs.	
State of Maharashtra	... Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 147 OF 2018

Cyrus Dinshaw Dabierwala	... Applicant
Vs.	
State of Maharashtra	... Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 207 OF 2018

Anil Sharma	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Vikram Choudhary, Sr. Counsel a/w Mr. Girish Kulkarni & Mr. Aditya Mithe I/by Mr. Mrummai Kulkarni for the applicant in Revision Application No. 122 of 2018.

Mr. K.H. Kamble for the applicant in Revision Application No.147 of 2018.

Mr. Pranav Badhekar a/w Mr. Niranjana Panchpute and Mr. Anil Naidu I/by Mr. P.B.Pawar for the applicant in Revision Application No. 207 of 2018.

Ms. P.N. Dabholkar, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 18th JULY, 2018.**

P.C.

1. Applicants in all these applications are prosecuted vide proceedings pending before the learned Special Court, Greater

Mumbai viz; Special Case No. 59 of 2012, the offences alleged are under Section 7 and 12 of the Prevention of Corruption Act, 1988 and Section 120 B of Indian Penal Code.

2. The case of the prosecution in brief is that the complainant who is the police inspector attached to Azad Maidan Police Station was investigating the crime No.16 of 2016 for the offences punishable under Section 465, 467, and other offences. During the course of investigation of the said case, the accused No.3 who was then attached to Mumbai Railway approached the Investigating Officer and requested him to return back the documents which is seized during the course of investigation and represented that amount of Rs.1,00,000/- will be paid for obliging. Accused No.2 and 3 were made to talk with the Investigating Officer and an amount of Rs.5,00,000/- was offered to the Investigating Officer for showing favours to them while investigating the crime.

3. Applicants in all these applications had preferred an application for discharge before the Special Court which has been rejected by common order dated 5th February, 2018. The primary contentions of the applicants before the Special Court was that Section 7 of Prevention of Corruption Act was not attracted in this

case. It was contended that if Section 7 is invoked then necessarily there has to be a demand without which there can be no prosecution under the offences which are invoked against the applicants. If the demand does not exist the prosecution under Section 7 would fail. It is submitted by the counsel appearing for the applicants that the issue relating to applicability of Section 7 of the Prevention of Corruption Act was not dealt with by the trial Court in proper prospective. My attention was drawn to the impugned order passed by the trial Court. In paragraph 17 of the impugned order, it is observed that the advocate representing the accused had relied upon several decisions in support of their contentions which were not applicable to show that charges are groundless in relation to the submissions about the non-applicability of Section 7 of the Prevention of Corruption Act. The Court further observed that the case of the prosecution is simple and that all accused had conspired to give bribe to the complainant in order to deter him from discharging his official duties and there is sufficient evidence to this effect which may attract Section 7 of the Prevention of Corruption Act.

4. The Court also observed that the said provision may be applicable in the present case. Apparently, the issue raised has not

been dealt in proper perspective. In my opinion the main contention of the applicants qua applicability of Section 7 of the Prevention of Corruption Act is required to be dealt with by the Court. I do not find any cogent reason for discarding the said issue. It is submitted that in view of the nature of order passed by the trial Court, the matter be relegated back to the said Court for hearing the application afresh. It is further submitted that the applicants would like to adjudicate another issue in the light of the Prevention of Corruption (Amendment Bill) 2013 to highlight the intention of legislature in amending the provisions although it has remained to be Bill. Learned APP on instructions submitted that the matter can be remanded back to the trial Court for considering the said issue. In the circumstances, I pass the following order.

ORDER

- (i) Impugned order dated 5th February, 2018 is set aside. The Special Court (ACB), Greater Mumbai is directed to hear the application for discharge preferred by the applicants in ACP Special Case No. 59 of 2012 afresh and decide the same in accordance with law without being influenced by the earlier order;
- (ii) Applicants are also permitted to raise both the issues referred to in this order and any consequential issues relating to case in

support of application for discharge;

(iii) It is made clear that this Court has not expressed any opinion on the merits of the case;

(iv) The trial Court shall decide the application for discharge in accordance with law;

(v) Criminal Revision Application No. 122 of 2018, Criminal Revision Application No. 147 of 2018 and Criminal Revision Application No. 207 of 2018 stand disposed off.

Sachidanand
Kuttan Nair

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by Sachidanand
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(PRAKASH D. NAIK, J.)