

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

CRIMINAL REVISION APPLICATION No. 207 OF 2016

Shri Nikhil Wadhavakar

...Applicant

Vs.

Union of India and Ors.

...Respondents

Mr. Vivek Gore for Applicant
Mr H.S. Venegaonkar, CBI
Mr. Y.Y. Dabke- APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 1, 2018

P.C.

1. In Special Case No. 91 of 2012, an application for discharge came to be moved by the Applicant- Accused, who was charge sheeted for the offence punishable under Section 120 of the Indian Penal Code r./w. Section 7 and 15 of the Prevention of Corruption Act, 1988.

2. The application for discharge, moved under section 239 of the Criminal Procedure Code, came to be rejected by the Special Judge, as such, this revision.

3. The learned counsel for the Applicant would urge that the entire evidence at its face value if accepted, still no case under section 7 and 15 of the

Prevention of Corruption Act, 1988 can be made out against Accused person. So as to substantiate the contention, he would draw my attention to the transcript of the conversation, which is produced at Annexure 'A'. He would claim that the Applicant was never personally involved in the conversation and demanded the amount. According to him, the references in the recorded conversation to the name of the Applicant by one of the sub-ordinate officer has no corroboration qua other substantial piece of evidence. By inviting attention of this Court to the judgment in the matter of **Panalal Damodar Rathi vs. State of Maharashtra [(1979) 4 SCC 526]**, the learned counsel would urge that it is a case of discharge. According to him, in view thereof, since the prosecution against the Applicant is not maintainable, this Court should set aside the impugned order and in exercise of its inherent power under Section 239 of the Criminal Procedure Code should discharge the Applicant.

4. The learned APP for the State would invite attention of this Court to the transcript of conversation produced on record along with confirmation panchnama. By inviting attention to the various statements in the conversations, recorded at page 69, he would submit that there is direct demand made by the Applicant by way of illegal gratification and, as such, there is a direct case of, prima facie, involvement of the Applicant. He would rely upon the Scheme of

Prevention of Corruption Act and more particularly, the requirements thereunder.

5. Considering the rival submissions, it is not in dispute that the complaint was proceeded under the relevant provisions of the Central Excise Act for the default committed pursuant to the report submitted by the present Applicant. However, such eventuality of submitting report is hardly any assistance to the present Applicant to claim any discharge at this stage of the proceeding. The conversation recorded between the Applicant and the Complainant as reflected in the confirmation panchnama, in fact, takes this Court to the conclusion that there is a prima facie involvement of the Applicant in the crime in question as the demand could be inferred therefrom. So far as the issue of availability of the other evidence so as to corroborate the conversation is concerned, the said issue need not to be gone into at this stage and the same is in the form of defence of the Applicant. Though the Applicant relied upon the judgment of the Apex Court in **Panalal Damodar Rath (supra.)**, however, upon perusal thereof it could be noticed that it is after the full-fledged trial, the Apex Court, by taking recourse to the provisions of the aforesaid Act and in the absence of in corroborating evidence has proceeded to pass judgment in the said matter. In the present case, the charge is yet to be framed as the Applicant is praying for

discharge and, as such, it is always open for the defence to produce on record the corroborating material if occasion so arise. Hence, no case is made out by the Applicant to discharge . Hence, criminal revision application is dismissed.

[NITIN W. SAMBRE, J.]