

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

CRIMINAL REVISION APPLICATION NO.172 OF 2017

The State of Maharashtra
Through : Dy. Superintendent of Police,
Anti Corruption Bureau,
Osmanabad. **.. APPLICANT**

VERSUS

Vithal s/o. Pandurang Dhage,
Age: 65 Years, Occup. Fair Shop Keeper,
R/o. Chinchpur (Dhage), Tq.Bhoom,
Dist. Osmanabad. **.. RESPONDENT**

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Mr.S.P.Sonpawale, Additional Public
Prosecutor for the Applicant-State.
Mr.V.S.Undre, Advocate for the respondent.

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CORAM: V.M.DESHPANDE, J.
DATE : 22.03.2019

ORAL JUDGMENT:

1] Rule. Rule made returnable forthwith
and heard finally with the consent of the
parties.

2] The State has approached this Court,
challenging the order passed by the learned

I/c. Special Judge, Bhoom, dated 03.06.2017, below Exh.24 in Special Case [ACB] No.01/2017, by which the learned Judge of the Court below has allowed the Application [Exh.24], filed on behalf of the original accused No. 2 – Vithal Pandurang Dhage i.e. the present respondent for discharge.

3] Heard Shri S.P. Sonpawale, learned Additional Public Prosecutor for the Applicant–State and Shri V.S.Undre, learned counsel for the respondent–original accused No.2.

4] According to the learned counsel for the respondent, the present respondent has not made any demand to the complainant. It is also stated by him that at the time of alleged trap, he was also not present on the spot, and was present at his native place, which is 10 kilometers away from the spot.

5] Perusal of the impugned order, shows that primarily the learned Judge of the Court below has discharged the present respondent—accused No.2, because he has not demanded the bribe amount from the complainant.

6] One Hanumant Mohan Dhage approached to the Anti Corruption Bureau on 24.10.2016 and reported that accused No.1 Sudhir Kale demanded illegal gratification for issuance of the ration card. Accordingly, the Officials of the Anti Corruption Bureau at Osmanabad, prepared pre-trap panchanama on the very same day. Shri Asif B. Shaikh, Police Inspector, Anti Corruption Bureau, Osmanabad, decided to lay trap on the said Sudhir Kale. Accordingly, the raiding party proceeded to the office wherein the said Sudhir Kale was discharging his duties. From the record, it is clear that, on the said day

accused No.1 Sudhir Kale accepted bribe amount from the complainant—Hanumant Mohan Dhage through the present respondent i.e. accused No.2. After acceptance of the said amount and after prearrange signal, the Investigating Officer along with other raiding party, entered into the office and on enquiry, it was revealed that the present respondent has accepted the bribe amount at the behest of accused No.1—Sudhir Kale and the said was kept in his pocket. Accordingly, search of the present respondent was taken and on the said search, notes of Rs.200/- were found in his possession, and when those were examined under the ultraviolet lamps, there were traces of anthracene powder.

7] Thereafter, after completion of other formalities, the FIR was lodged by Shri Asif B. Shaikh, Police Inspector, Anti Corruption Bureau, Osmanabad, upon which

crime was registered and which ultimately culminated in Special Case [ACB] No.01/2017.

8] From the panchnama No.2, it is clear that the notes of the anthracene powder were found in possession of the respondent-Vithal Dhage. According to the respondent, he was not present there and he was at his native place, in my view, the said defence will have to be proved during the trial, wherein his defence can be tested.

9] The learned Judge, in my view, has committed an error that the present respondent is required to be discharged because he has not demanded the amount. The learned Judge has not given thoughtful consideration to the various provisions of the Prevention of Corruption Act, especially Section 12 of the said Act, which says even the person, who abets the offence, can be

prosecuted. Consequently, the Courts below has committed an error, which cannot sustain in the eyes of law. Hence, I pass the following order:

ORDER

- i] The Criminal Revision Application is allowed.
- ii] The order dated 03.06.2017 passed by the learned I/c. Special Judge, Bhoom, District Osmanabad, below Exh. 24 in Special Case [ACB] No.01/2017, is hereby quashed and set aside. The respondent-Vithal Pandurang Dhage will have to face trial in the said case.
- iii] Needless to mention that it will be open for the respondent to prove his defence at the appropriate stage.

iv] Rule is made absolute on above terms. The Criminal Revision Application is disposed of accordingly.

[V.M.DESHPANDE]
JUDGE

DDC