

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

CRIMINAL REVISION APPLICATION NO. 468 OF 2018

Jawahar K. Jagiasi	]	
204, 1 st Floor, "B" Wing,	]	
Shubhada CHS,	]	
Plot No.63-B, 64 and 64A,	]	
Opposite Police Club,	]	
Sir Pochkanwala Road, Worli,	]	
Mumbai – 400 030	]	<u>... Applicant.</u>

:- Versus :-

- | | | | |
|----|--------------------------|---|--------------------------------|
| 1. | The Union of India |] | |
| | C.B.I., A.C.B., Mumbai |] | |
| 2. | The State of Maharashtra |] | <u>... Respondents.</u> |

Mr.Girish Kulkarni i/b. Mr.Kripashankar Pandey for Applicant.
Mr.Sandesh Patil, Spl. PP. a/w. Ms.Divya Pawar for Respondent No.1.
Mr.R.M. Pethe, APP for Respondent No.2.

CORAM : A.S. GADKARI, J.

DATE : 25th September 2019.

PC. :

1] The present Revision under Section 397 of the Criminal
Procedure Code (*for short, "Cr.PC."*) is directed against the Order dated

16th August 2018 passed below Exhibit No.45 in CBI Special Case No. 62 of 2012, rejecting the application filed by the applicant under Section 227 of the Cr.P.C. for his discharge under Section 8 of The Prevention of Corruption Act, 1988 (for short, "P.C. Act")

2] Heard Mr.Kulkarni, learned counsel for the applicant, Mr.Patil, learned Special PP for respondent No.1-CBI and Mr.Pethe, learned A.PP for respondent No.2-State. Perused the entire record annexed to the application.

3] It is the prosecution case that, the informant, Mr.Amod Sharma was an accused in CBI Case No. RC-40(A)/2011-Mumbai, registered with CBI, ACB, Mumbai. Mr.Amod Sharma, with a view to get his financial statements ready for answering the queries of CBI visited the office of the applicant, who is a Tax Consultant, having his office at Mittal Chambers, Nariman Point, Mumbai. The applicant told Mr.Amod Sharma that, he will weaken his case and extend help to him by his contacts with CBI Officers. The applicant therefore induced Mr.Amod Sharma and demanded a sum of Rs.1 Crore in four weekly installments of Rs.25 Lakhs each, for weakening the case of CBI. As the informant did not want to pay the said illegal gratification to the applicant, he approached the CBI ACB,

Mumbai, and filed a written complaint dated 16th February 2012. The Investigating Officer verified genuineness and truthfulness of the said written complaint in presence of *Panch* witnesses. That the present case i.e. FIR No.RC-BA1/2012/A0007 came to be registered by CBI, ACB, Mumbai on 16th February 2012. After complying with the initial necessary legal formalities, the conversation between the applicant and Mr.Amod Sharma was recorded at the office of the applicant. In furtherance of the amount demanded by the applicant, the prosecuting agency laid a trap and accordingly, the applicant was caught red handed while demanding and accepting the bribe as part payment from the complaint on 20th February 2012 in presence of two independent *panch* witnesses. The tainted amount was recovered from the dicky of the car of the applicant in presence of the said witnesses. During the course of investigation, it was revealed that, the then co-accused Mr.Mandar Goswami had conspired with the applicant and therefore, after completion of investigation charge-sheet came to filed under Section 120-B of I.P.C. read with Section 8 and 7 of P.C. Act 1988.

4] The record discloses that, Mr.Mandar Goswami has been discharged from the present case by this Court by its Order dated 17th

March 2015 passed in Criminal Revision Application No. 209 of 2013. The applicant thereafter filed discharge application under Section 227 of the Cr.P.C. before the Trial Court below Exhibit-45 in CBI Special Case No.62 of 2012. The said application has been partly allowed by the Trial Court by its impugned Order dated 16th August 2018, thereby discharging applicant under Section 120-B of I.P.C. and rejecting his application under Section 8 of the P.C. Act 1988.

5] Mr.Kulkarni, learned counsel for the applicant submitted that, the co-accused Mr.Mandar Goswami was a public servant and after his discharge and in the absence of any other public servant to face the charges under Section 8 of the P.C. Act prior to its substitution by the Amendment Act of 2018 can not be made applicable to the applicant. He further submitted that, as there is no public servant facing charge along with the applicant under Section 8 of the P.C. Act, in the present crime, the applicant at the most can be tried for an offence under the provisions of Indian Penal Code but certainly not under the P.C. Act. In support of his contention, Mr.Kulkarni relied on following two decisions.

(i) Kishore Khanchand Wadhwani & Anr. Vs. State of Maharashtra in Writ Petition No. 2925 of 2019, dated 26th

July 2019, by the Division Bench of this Court.

(ii) Babji Vs. State of Andhra Pradesh in Criminal Appeal No. 2159 of 2009, dated 9th August 2018, by the Hon'ble Supreme Court.

He submitted that, the Trial Court has failed to take into consideration this vital aspect of the matter and therefore, the impugned Order may be quashed and set-aside.

6] Per contra, Mr.Patil, learned counsel for the respondent No.1 vehemently opposed the application and submitted that, Section 8 of the P.C. Act prior to its substitution by Amendment Act of 2018 can be made applicable even to a private person who with a view to influence public servant accepted illegal gratification by corrupt or illegal means. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in the case of *State Through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh, (2014) 11 SCC 724.*

Mr.Patil further submitted that, it is the applicant who with a view to influence the Investigating Officers of the case wherein Mr.Amod Sharma was an accused had promised and induced him to part with the said amount and as a matter of fact, the applicant was apprehended with

the tainted amount of Rs.25 Lakhs from the dicky of his car. He therefore submitted that, the present application may be dismissed.

7] The facts giving rise to the filing of the chargesheet in the present case are briefly stated here-in-above in para No.3 and repetition of the same is hereby avoided for the sake of brevity.

8] Section 8 of The Prevention of Corruption Act, 1988 prior to its substitution by Amendment Act 16 of 2018 which came into effect on 26th July 2018, reads as under :-

“8. Taking gratification, in order, by corrupt or illegal means, to influence public servant – Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a

term which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine.”

9] As noted earlier, in the present case, the applicant with a view to influence the officers of the CBI who were investigating the Case No. RC-40(A)/2011-Mumbai, has been apprehended red handed while carrying the tainted amount. There is sufficient material available on record to show the clear complicity of the applicant in the present crime.

The Hon'ble Supreme Court in the case of *R.S. Nayak Vs. A.R. Antulay and Anr.*, reported in AIR 1986 SC 2045, while analyzing provisions of Sections 227, 239 and 245 of the Cr.PC., in unequivocal terms in Para 44 has held as under:-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when 'the Magistrate considers the charge against the

accused to be groundless." The power to discharge is exercisable under Section 245 (1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction..." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

10] The Hon'ble Supreme Court in the case of *Babji (supra)*, in para Nos.5 and 6, has held as under :

“5. In order to establish the offence under Section 8 of the Prevention of Corruption Act it must be proved:

- (i) That the accused accepted or obtained, or agreed or accept, or attempted to obtain, from someone;*
- (ii) For himself or for some other person;*
- (iii) Any gratification whatever;*
- (iv) As a motive or reward for inducing by corrupt or illegal means any ‘public servant’ to do or forbear to do any official act or to show favour or render any service to any of the persons specified in the section.*

6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act.”

11] The Hon’ble Supreme Court in the case of *Jitender Kumar Singh (supra)* in para Nos.26.2, 29 and 30 has held as under.

26.2. Section 8 deals with the taking of gratification, by corrupt or illegal means, to influence public servant. Section 9 deals with taking gratification, for exercise of personal influence with public servant. The offences under Sections 8 and 9 can be committed by a person

who need not necessarily be a public servant. An offence under Sections 8, 9 or 12 can be committed by a public servant or by a private person or by combination of both.

29. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:

(i) A private person offering a bribe to a public servant commits an offence under Section 12 of the Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

(ii) A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

30. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be

tried only by a Special Judge, and by no other court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in the array of parties, can the Special Judge proceed against private persons who have committed offences punishable under the PC Act.

It is thus clear that, a private person can be only accused in an offence under Sections 8 or 9 of the said Act who accepted gratification in order to influence a public servant by corrupt or illegal means.

12] The decision relied upon by the learned counsel for the applicant in the case of *Kishore Khanchand Wadhwani (supra)* basically deals with the provisions of Amended Section 8 of the P.C. Act and therefore, the said decision is not applicable to the present case.

13] In view of the ratio laid down by the Hon'ble Supreme Court in the case of *Jitender Kumar Singh (supra)* there is certainty of the legal proposition that, a private person also can only be accused in an offence

under Section 8 of the P.C. Act. After perusing the entire chargesheet, this Court is of the considered view that there is more than sufficient material available on record to proceed to frame charge under Section 228 of the Criminal Procedure Code against the applicant.

I find no merits in the application.

Application is accordingly rejected.

[A.S. GADKARI, J.]