

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

CRIMINAL REVISION APPLICATION NO. 30 OF 2021

Mohan s/o Laxman Bhandare,
Age; 59 years, Occ; Agri, & Up-Sarpanch
R/o; Aurad Shahjani, Tq. Nilanga
District; Latur.

...Applicant

VERSUS

The State of Maharashtra
Through Police Station Officer,
Police Station Aurad Shahajani,
Tq. Nilanga, Dist. Latur.

...Respondent

...
Advocate for applicant : Mr. Rajendra S. Deshmukh (Senior Counsel)
a/w Mr. Vishal Chavan i/by Mr. Shinde Shrikishan S.
APP for Respondent-State : Mrs. R.P. Gaur
...

CORAM : SURENDRA P.TAVADE , J.

**RESERVED ON : 17th August, 2021.
PRONOUNCED ON : 23th August, 2021.**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at admission stage.
2. The revision applicant is challenging the order dated 28.01.2020 passed by the learned Additional Sessions Judge and

Special Judge, Nilanga, District Latur below Exh. 21 in Special Case (ACB) No. 01 of 2019, by which an application filed by the present applicant for his discharge was rejected.

3. The facts giving rise to the present revision summarized as under :

The applicant was elected as a member of village panchyat, Aurad Shahajani, Tq. Nilanga, District Latur in general election held and thereafter he was elected as Up-Sarpanch of village Aurad Shajani. Fulchand Madhavrao Bondge is the employee of the village panchyat. He had given an application to village panchayat, seeking no objection certificate for opening Permit Room and Beer Bar. In view of the said application, the village panchyat had passed a resolution on 14.08.2018 resolving that the permission be granted to said Fulchand for starting Permit Room and Beer Bar. It is further contended that on 21.08.2018, the Head Master of Maharashtra Secondary and Higher Secondary School, submitted an application and objected for grant of 'No Objection' to the Permit Room and Beer Bar, as said school is situated within 100 to 125 feet away from the said Permit Room and Beer Bar. On the basis of the said application, the village panchyat conveyed a meeting and the earlier resolution dated 14.08.2018 was cancelled. The applicant being Social Worker has also opposed for granting of NOC for opening the Beer Bar and

Permit Room to Bondge.

4. The son of Fulchand namely Bhagwat Bondge filed a complaint with Anti Corruption Bureau (for short 'ACB'), Latur wherein, he alleged that the applicant and Gramsevak original (A-1) in Sessions Case No. 01 of 2019 demanded money from him for granting no objection certificate for starting Permit Room and Beer Bar. On the basis of said complaint the officer of ACB, verified the information and laid a trap on 29.11.2018. The complainant paid Rs. 60,000/- to Gramsevak, original (A-1). Accordingly, the Gramsevak was trapped while accepting bribe of Rs. 60,000/-. It is contended that in the process of verification of the information given by the informant, the Investigating Officer had intercepted the conversation between the informant and the present applicant, as well as the informant and the Gramsevak. On the basis of said conversation, it was alleged that the applicant has aided and abetted the informant to pay the bribe to the Gramsevak for issuance of no objection certificate, hence the applicant came to be arrested. On completion of investigation the charge sheet was filed against the applicant along with Gramsevak.

5. It is contended that there is no sufficient ground for proceeding against the applicant. It is contended that the applicant

was not in favour of issuing no objection certificate for the said Permit room and Beer Bar of Bondge (the father of informant). The applicant never abetted the informant and never demanded money for granting NOC as alleged in the FIR. It is contended that on bare reading of the transcription prepared in pursuance of alleged voice recording, does not disclose any offence against the applicant. It is contended that the applicant has falsely implicated in the crime. It is contended that the applicant was working as Up-sarpanch of village . Up-sarpahch is not a public servant within the meaning of Section 21 of the Indian Penal Code (for short "IPC"). It is contended that the applicant has no concern with the issuance of no objection certificate, therefore, there is no question of demand of money from the informant for issuance of no objection certificate. It is contended that the role attributed to the applicant does not fall under the provisions of Section 7 and 12 of the Prevention of Corruption Act, 1988 (for short "PC Act"). It is contended that the transcription of voice recording is also not implicating the applicant in the crime. It is contended that the trial Court has not considered the material placed before him properly, there are no grounds to proceed against the applicant for the charge levelled against him. Therefore, he should have been discharged from the case, but the trial Court has wrongly rejected the application of the applicant for discharge. Therefore, it is prayed that the order of the trial Court be set aside and the applicant

be discharged from the Special Case (ACB) No. 01 of 2019.

6. Learned APP submits that though the applicant is not a public servant, still, the conversation recorded by the Investigating Officer establish that the applicant has abetted the crime. She also submitted that in the recorded conversation it is established that the applicant had abetted and instigated the informant to pay bribe to the Gramsevak and Sarpanch for issuance of no objection certificate. She submits that the offence under Section 12 of the PC Act is prima-facie established against the applicant, therefore, the Trial Court has rightly rejected the application. There is no need of any interference with the orders of the trial Court. She submitted that the application be dismissed.

7. Heard Mr. Rajendra S. Deshmukh, learned Senior Counsel for the applicant and Mrs. R.P. Gaur, the learned APP on behalf of Respondent-State.

8. At the outset, the learned counsel for the applicant relied on the ratio laid down in **Dilawar Balu Kurane Vs. State of Maharashtra**, reported in (2002) 2 Supreme Court Cases 135, it is observed that

“14. We have perused the records and we agree with the

above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.”

In view of the above observations we have to consider the facts of the present case. It is the case of the informant that his father had given an application for issuance of no objection certificate for Permit Room and Beer Bar. The said application was not considered by the village panchyat, Aurad Shajani, hence on 20.11.2018 the informant had been to the Grampanchyat Office. He met Gramsevak (A-1) and the applicant. It is alleged that both of them demanded Rs. 1,50,000/- for issuance of no objection certificate. Therefore, the informant lodged complaint with ACB, Latur. On 22.11.2018 the officers of the ACB called pancha witnesses and tried to verify the demand of illegal gratification. The officers of ACB verified the demand of gratification with the help of conversation held between informant and Gramsevak (A-1). They decided to lay trap on 23.11.2018 but the accused No. 1 demanded blue print of his proposal, hence the procedure of trap was postponed till 26.11.2018.

The informant could not get the blue print of his proposal, therefore, the procedure of trap was again postponed till 27.11.2018. The informant went to the shop of the applicant and recorded the conversation between himself and the applicant. In the said conversation the applicant advised the informant to pay bribe to the Gramsevak and Sarpanch. On 28.11.2018 the informant contacted the Gramsevak on phone. The Gramsevak asked him to pay cash of Rs. 60,000/-. Similarly, he was not available in the town, therefore, the trap was laid on 29.11.2018 and on that day the informant paid Rs. 60,000/- to the Gramsevak. The said amount was seized from the possession of the Gramsevak by the team of the ACB. Accordingly he was arrested. On the basis of conversation recorded between the informant and the applicant the applicant was arrested for abatement for the offence of paying bribe to the public Servant namely Gramsevak.

9. Learned counsel for the applicant submitted that on minute scrutiny of the alleged conversation, it does not disclose the role of the applicant in the crime. He submitted that the applicant never demanded any amount from the informant. He also submitted that the contents of the conversation are wrongly used against the applicant.

10. The prosecution has produced on record the conversation between the applicant and the informant. On close scrutiny of the said conversation it appears that the informant told the applicant that the Gramsevak and Up-Sarpanch were demanding money from him. It appears that the applicant had advised the informant that he is required to pay money to the Gramsevak and Sarpanch. It also appears that the applicant had advised the informant to pay Rs. 25,000/- each to the Gramsevak and the Sarpanch and also reiterated that the same amount is required to be paid for issuance of no objection certificate. If the said conversation is taken into account, prima-facie it can be said that the applicant had instigated the informant to pay bribe to Gramsevak and Sarpanch, accordingly an amount of Rs. 60,000/- was accepted by the Gramsevak as bribe and accordingly he was trapped. If the entire transaction is taken into account, it can be said that the informant was in touch with the applicant since beginning. He was taking advise of the applicant, whether to pay the bribe to the Gramsevak and Sarpanch and to what extent. Ultimately the applicant advised the informant to pay bribe to the Gramsevak and Sarpanch for issuance of no objection certificate. In view of the above facts one has to see the provisions of Section 12 of the PC Act, which runs as under :

“Whoever abets any offence punishable under this Act, whether or not that offence is committed in

consequence of that abetment, 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.”

In view of the amended provisions of Section 12 of the PC Act and the conversation produced on record prima-facie, it can be said that the act of the applicant can be called as an abatement to commit offence under Section 7 of the PC Act. Prima-facie there is sufficient material against the applicant, therefore, the applicant cannot be discharged from the offence alleged against him. The Trial Court has rightly considered the provisions of the law vis-a-vis the facts of the case and rejected the application. I am not inclined to interfere with the order of the trial Court the observations made in this order as prima-facie. It is made clear that observations made herein-above, be construed as expression of opinion for the purpose of decision of this Revision Application and the same shall not in any way influence the trial in other proceedings. With this the following order :

ORDER

1. Criminal Revision Application is dismissed.
2. Rule is discharged.

**(SURENDRA P.TAVADE)
JUDGE**