

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

CRIMINAL REVISION APPLICATION NO. 133 OF 2019

Chintaman s/o Bapurao Sanap,
Age 49 years, Occ. Government
Service as Talathi (At present under
suspension), R/o. Jawahar Colony,
Beed, Tq. and Dist. Beed.

... **Applicant**

VERSUS

The State of Maharashtra,
through the Police Inspector,
Anti Corruption Bureau, Beed.

... **Respondent.**

...

Senior Advocate for the Applicant : Mr. Rajendrraa Deshmukkh.
APP for the Respondent/State : Mr. P. N. Kutti.

CORAM : **MANGESH S. PATIL, J.**
DATE : **20.07.2021.**

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. By way of this Revision under Section 397 of the Code of Criminal Procedure the applicant is impugning the order passed by the learned Assistant Sessions Judge thereby rejecting his application preferred under Section 227 of the Code of Criminal Procedure seeking discharge from the offences punishable under Section 7(1), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter the 'P. C. Act').

3. Shortly stated the allegations of the prosecution are to the effect that the applicant has been serving as a Talathi and was at the relevant time

posted at Gadhi Tq. Georai. The original complainant deals in sand. He owns couple of trucks for its transportation and he drives one of those himself. It is alleged that under the pretext of taking action for illegal transportation of sand and to permit smooth sailing he demanded Rs. 25,000/- per vehicle. He settled the amount at Rs. 35,000/-. The informant reported the matter to the Anti Corruption Bureau. The applicant was trapped raid handed while accepting the money. The tainted currency notes were seized from his custody. A memory card from his telephone was seized and in due course of time the offence was registered and the charge-sheet was filed.

4. Learned Senior Advocate Mr. Deshmukkh would submit that there is no concrete material to demonstrate *prima facie* that the applicant was actually authorized to intercept the vehicles illegally transporting sand. For that purpose he would point out the statement of one Nayab Tahsildar Mr. Vajinath Haribhau Joshi who specifically states that the applicant was not legally authorized to take any action against illegal transportation of sand. The learned Senior Advocate, therefore, would submit that since it was not a part of his official duty, the allegations about he having demanded money for smooth sailing of transportation is not covered by his official duty so that he can be punished by invoking the provisions of Section 7(1), 13(1)(d) read with Section 13(2) of the P. C. Act.

5. The learned Senior Advocate then submits that the entire procedure followed by the Investigation Officer is faulty. He has clubbed the verification and pre-trap panchnama. He did not resort to independent verification of the alleged demand. He would submit that in fact there is no material to *prima facie* reveal that the applicant made any demand much less for showing some favour. He would also point out that soon after the alleged trap a statement of the applicant was recorded and at the first point of time he specifically asserted about the tainted currency notes having been thrust into his pocket. He also submits that the telephonic conversation in

the form of CDR available with the charge-sheet no where demonstrates any demand of money by the applicant.

6. Lastly, the learned Senior Advocate would submit that the Collector Beed is the appointing authority of the applicant and the sanction under Section 19 of the P.C Act to prosecute him has been accorded by the Sub Divisional Officer Beed. The sanction therefore having not been accorded by the person who has appointed the applicant is void ab initio. The learned Senior Advocate would, therefore, submit that ignoring all these circumstances the learned Judge has refused to discharge the applicant. The order passed by him is grossly erroneous and illegal.

7. The learned A.P.P. Mr. Kutti would submit that since the applicant is seeking discharge under Section 227 of the Code of Criminal Procedure, the scope of the present enquiry is limited in ascertaining whether there is on the face of the record sufficient ground for proceeding against the applicant. He would submit that the material is not to be scanned meticulously at this juncture which can happen only at the full-fledged trial. Going by the charge-sheet, there is enough material to reveal demand and its acceptance which is sufficient to prima facie establish the offence. So far as sanction is concerned he would submit that legality or otherwise of the sanction can only be gone into at the time of trial. At this juncture it is sufficient to demonstrate that the learned Sub Divisional Officer has accorded the sanction. He would further point out that by virtue of Government Resolution No. CDR/1099/प्रक 62/99/11-अ dated 03.04.2000 the Sub Divisional Officer has been authorized to remove the applicant from his office. It would, therefore, be appropriate to allow the learned Trial Court to decide the issue at the trial and the applicant may not be discharged.

8. Lastly, the learned A.P.P. would submit that since the applicant is invoking the powers of this Court under Section 397 of the Code of Criminal Procedure the scope of the present enquiry is limited in ascertaining if the

impugned order can be said to be either perverse or arbitrary. It is only in that eventuality that this Court can interfere in the impugned order.

9. I have carefully gone through the copy of the charge sheet and considered the rival submissions. Suffice for the purpose to bear in mind that as the applicant is seeking discharge under Section 227 of the Code of Criminal Procedure, it is necessary to ascertain if material with the charge sheet even if it is accepted at its face value does or does not make out sufficient ground to proceed against the applicant. Needless to state that since this is a pre-trial stage, the enquiry has its inherent limitations. The factual disputes cannot be gone into since the parties do not have an opportunity to lead evidence to prove or disprove those.

10. Bearing in mind the above state of affairs, if one examines the matter in hand, at this juncture though there are certain circumstances indicative of the Investigating Officer having not followed the procedure and settled norms of verifying the allegations of demand of money and has clubbed the verification and pre-trap panchnama, in my considered view that cannot be a reason to discharge the applicant.

11. Again, though there is a statement of Nayab Tahsildar Mr. Joshi to the effect that it does not form part of the duty of the applicant to take any action against the illegal transportation of sand, in my view, the question whether it was within his powers or otherwise at least at this juncture is inconsequential. The fact remains that he was holding the post of Talathi and had pretended to take action unless he was paid money. A layman is not supposed to know if a public servant is making the demand in respect of an act which does not fall within the powers of his official duties. The fact that he is a public servant itself is sufficient for a layman to succumb to the demand. The fact remains that under the garb of preventing action being taken against the informant for transportation of sand, the applicant asked him to pay the money. This would certainly constitute a demand in the form

of illegal gratification.

12. There is a call data record annexed to the charge-sheet which clearly shows that there was a lengthy telephonic conversation between the applicant and the informant, most of which *prima facie* touches to the transportation of sand and payment of some money. There is a clear reference wherein there is a reference to transportation of sand, interception of vehicles, payment of money and in one such conversation even the applicant has specifically uttered figure 'Pastis' (35). Obviously, the entire telephonic conversation and its context will have to be gone into to ascertain exactly in what respect this figure was being discussed between the two. At this juncture it is sufficient to refer to this conversation to demonstrate as to how there is sufficient ground to believe that the applicant did demand Rs. 35,000/-

13. Coupled with the above state of affairs, as is pointed out by the learned Senior Advocate Mr. Deshmukkh for the applicant, in his statement soon after the trap the applicant came out with a version that the tainted currency notes were thrust into his packet. This action of thrusting of currency notes is a pure question of fact which can be addressed during the trial. For the time being it is indicative of the fact that the tainted currency notes were found in his packet. Meaning thereby that this is another circumstance which refutes the applicant's version regarding absence of sufficient ground to proceed.

14. Coming to the dispute regarding sanction, it is not that there is no sanction at all. Though the applicant is appointed by the Collector Beed, the sanction order passed by the learned Sub Divisional Officer Beed specifically refers to a Government Resolution authorizing the Officers of his cadre to remove a Talathi. Though the Government Resolution is not on record, it cannot be concluded that the sanction is illegal without extending an opportunity to the prosecution to substantiate and demonstrate such

authorization.

15. In the nutshell, going by the investigation there is enough material to proceed against the applicant. The learned Judge has for the valid reasons rightly refused to discharge the applicant. The impugned order is not perverse or arbitrary so that this Court can step in and exercise the power under Section 397 of the Code of Criminal Procedure.

16. The Revision is dismissed. The Rule is discharged.

17. It is clarified that the observations made herein above are restricted to the decision of the present matter and the Trial Court shall not get influenced by those.

(MANGESH S. PATIL, J.)

mkd/-