

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

REVISION APPLICATION NO.179 OF 2020

Naveen Kumar Aggarwal
Age: 44 yrs., Occupation:
Service,
Residing at: Flat No.410, SBI-III,
Old Income Tax Colony, Yashodharm,
Goregaon (East), Mumbai 400 063 ... Applicant
(Org. Accd.No.1)

Vs

1 The State of Maharashtra
2 CBI, ACB, Mumbai ... Respondents
...

Mr. Rajendra Shirodkar, Senior Advocate with Mr. Mihir
Ghag i/by Mr. Archit Sakhalkar for the Applicant.

Ms. Sharmila Kaushik, APP for the Respondent No.1-
State.

Ms. Ameeta Kuttikrishnan, for the Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 14, 2021.

JUDGMENT :

Rule.

2 By consent, Rule is made returnable forthwith.
Respondents waive service.

3 This Revision Application challenges the order dated 20th January, 2020 by which the learned Additional Sessions Judge refused to discharge the applicant-accused from the CBI Special Case No.54 of 2017.

4 Prosecution case is that, the applicant while working as Income-tax officer in Mumbai, demanded bribe Rs.10 Lakhs from the complainant Shri Prabhu Dayal Kodwani to ignore all the disputed cash deposits and discrepancy noticed with regard to the sale consideration of a property in relation to the assessment proceedings of the complainant's daughter Ms. Mysha Israr Ahmad Qureshi. In the assessment proceedings, Ms. Mysha was represented by Vinay K. Gupta, Chartered Accountant (Accused No.2). On or around 20-21st December, 2016, Mr. Gupta informed

the complainant and his wife that applicant demanded Rs.10 Lakhs, to ignore the discrepancies and disputed cash deposits, and if not paid, he would impose additional tax and penalty, which could be around Rs.1 Crore and 81 Lakhs. On 27th December, 2016, complainant, his wife and C.A., Mr. Gupta met the applicant in the income-tax office at Piramal Chambers. According to the complainant, he explained the queries raised by the applicant/income-tax officer. However, applicant emphasised that transactions reflected in the bank account would be taxable. As such, he did not accept the explanation and called the complainant on 29th December, 2016. Accordingly, the complainant, his wife and C.A. visited the office of the applicant on 29th December, 2016 and submitted written reply in response to the queries raised by the applicant. According to the complainant, during the meeting, applicant demanded Rs.10 Lakhs to ignore all the queries, after which demand was scaled down to Rs.5 lakhs for ignoring the queries except the cash transactions. Since the complainant did not

want to bribe the officer, he filed written complaint on 29th December, 2016 with the Superintendent of Office CBI, ACB, Mumbai. On 30th December, complaint was verified by the Investigating Officer ('I.O.' for short) in the presence of two pancha witnesses. Thereafter raiding party proceeded to income-tax office at Piramal Chambers. I.O. instructed complainant to record his conversation with the income-tax officer and Chartered Accountant, Mr. Gupta in micro SD Card with the help of DVR of Sony make. One pancha witness although accompanied the complainant, he waited outside the chamber of the applicant/officer. The complainant recorded the conversation. transcript of the recorded conversation, divulged, tacit approval of the applicant to favour the complainant by ignoring certain queries. transcript further divulged that applicant consented to accept bribe money, which he demanded on 29th December, 2016 through Chartered Accountant. It appears that the complainant had expressed difficulty to

pay Rs.5,00,000/- at once and suggested that he would pay first Rs.50,000/- to Mr. Gupta, C.A. Whereupon applicant said, he may do so. Every event right from verification of the complaint till recording the conversation was noted in running panchanama (I) dated 30th December, 2016.

5 Thus, the transcript of the recorded conversation reveals, implicit approval of the applicant to show favour in assessment proceedings of complainant's daughter against the reward of Rs.50,000/-, which was to be paid to Mr. Gupta on behalf of the applicant.

6 After confirming the demand, pre-trap panchanama (II) 30th December, 2016 was drawn at around 17.15 hours. Raiding party upon applying phenolphthalein powder to Government currency notes proceeded to office of the C.A., Mr. Gupta. As per instructions, complainant paid Rs.50,000/- to Mr. Gupta and gave pre-decided signal confirming delivery of bribe to Mr. Gupta. Whereafter, CBI

team recovered tainted currency notes lying on the table of Mr. Gupta. Thereafter, Mr. Gupta was asked to dip his left hand fingers in the glass containing sodium carbonate solution. On dipping his left hand finger, colour of sodium carbonate solution turned into pink. Thus, transcript of the conversation between the complainant and Mr. Gupta recorded in micro SD Card imply that Mr. Gupta accepted Rs.50,000/- from the complainant on behalf of the applicant.

7 After completing investigation, final report has been filed.

8 Applicant sought discharge; however, the learned trial Judge declined to discharge him. Thus, feeling aggrieved by the order dated 20th January, 2020, applicant has approached this Court in its' revisional jurisdiction.

9 Mr. Shirodkar, the learned Senior Counsel for the

applicant has taken me through the charge-sheet to contend that there is no material, to even suggest that the applicant had demanded illegal gratification nor there is any material to show that bribe money so accepted by Mr. Gupta was on behalf of the applicant. Mr. Shirodkar submitted that material on record does not imply that applicant attempted to obtain reward or bribe through C.A. to show favour in assessment proceedings of complainant's daughter. Mr. Shirodkar has taken me through the transcript of conversation recorded on 30th December, 2016 to submit the transcript does not disclose demand of gratification. He would contend that the assessment order in question, was passed on 29th December, 2016 and uploaded on the official website on the same day. Therefore, it is argued that since the assessment order was passed and uploaded on 29th December, 2016, story of prosecution that on 30th December, 2016, he demanded Rs.5,00,000/- from the complainant to show favour in the assessment proceedings was inherently improbable, absurd and ill-motivated. Mr.

Shirodkar argued, the material on record does not establish that tainted currency notes allegedly recovered from the office of Mr. Gupta was in pursuance to alleged demand of bribe money by the applicant on 29th December, 2016. Mr. Shirodkar would insist that the assessment order in question was passed on 29th December, 2016 and this fact, itself, renders the prosecution case illogical. It is, therefore, argued that there is neither demand by the applicant nor acceptance of it. Mr. Shirodkar submitted that it is well settled position of law that demand for bribe money is *sine-qua-non* to convict the accused for the offence punishable under Sections 7, 13(1)(a) read with 13(2) of the Prevention of Corruption Act, 1988. Mr. Shirodkar submitted that even assuming, Mr. Gupta has accepted tainted currency notes from the complainant, however, that itself would not prove charge against the applicant in absence of evidence to prove demand of bribe money or to show that applicant had voluntarily accepted money knowing it to be bribe. Mr. Shirodkar, therefore, seeks discharge of the applicant from

the case.

10 Per contra, the learned Prosecutor would contend that complaint lodged on 29th December, 2016, was descriptive and narrates the events and particulars of discussion that was held in the meeting with the complainant on 27th December, 2016 in the presence of the C.A. The learned Prosecutor submitted that complaint was filed on 29th December, 2016, disclosed that applicant had demanded Rs.5 Lakhs to ignore certain queries and favour. the complainant in the assessment proceedings of his daughter. The learned Prosecutor would submit that transcript of recorded conversation between the complainant and the applicant and next conversation between the complainant and the C.A. clearly reveals, demand of bribe money and its acceptance through Mr. Gupta. It is argued, order impugned does not suffer any infirmity or material irregularity and/or illegality and thus, this Court in its revisional jurisdiction may not appreciate

the material on record and interfere in the impugned order.

11 For properly appreciating rival contentions, let me reproduce Section 227 of the Code of Criminal Procedure, 1973. It reads as under:

"227. Discharge:- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The law relating to the power of the Sessions Court to discharge the accused is well settled in the case of **State of Maharashtra v. Priya Sharan Maharaj & Ors. AIR 1997 SC 2041; Niranjan Singh Punjabi v. Jitendra Bijjaya AIR 1990 SC 1962**. The law is; that *'at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed offence or that there is not sufficient ground for proceeding against him*

and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.'

12 In the case of **Dilawar Babu Kurane v. State of Maharashtra AIR 2002 SC 564**, the Hon'ble Apex Court has held that *'In exercising powers under Section 227 of the Code, the settled position of law is that, the judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie, case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.'* Thus, if the test of grave suspicion is not satisfied, accused has to be discharged.

13 In the light of law enunciated in the judgments aforesaid, let me now indulge into sifting of evidence to take note of total effect of the material collected by the prosecution as against the applicant.

14 Applicant, herein, is income-tax officer. Complainant's daughter's tax assessment proceedings were before him. Complaint dated 29th December, 2016 refers to bribe money, demanded by the applicant to ignore cash credits. The allegations in the complaint were definite and not vague. On primary evaluation of the transcript of the conversation, as referred above, reveals demand of bribe money and tacit approval to its' acceptance through C..A. Moreover, transcript reveals, bribe was demanded in presence of C.A. Material shows, tainted currency notes were recovered from the C.A. on the same day. Thus, transcript of conversation, confirms the material allegations made in the complaint on 29th December, 2016. Additionally, transcript of conversation with the C.A., also

refers to the assessment order in question and demand of bribe by the applicant in the meeting held in chamber of the applicant on 29th December, 2016. Therefore, material before me discloses, grave suspicion suggesting complicity of the applicant in the crime in question. In my view, contention of the applicant that assessment order was passed and uploaded on 29th December, 2016 cannot be said to be proper explanation to the grave suspicion suggesting the applicant's complicity in the crime in question. In the light of the material on record, this Court at this stage do not come to conclusion that there is no sufficient ground to proceed against the applicant. Therefore, I do not find any merit in the application and as such, it is liable to be dismissed and accordingly, dismissed. However, the observations made in this order shall not influence the trial Court during the course of the trial. Application is dismissed.

15 Rule is discharged.

16 It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of revision and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)