IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.92 OF 2021

Mr. Dilip s/o Deorao Pohekar,
Age 63 years, Occupation: Retired,
R/o Plot No.24, Padole Layout,
Ring Road, Parsodi, Nagpur. .... **APPLICANT**

...V E R S U S...

1. The State of Maharashtra through
Police Station Officer,
Police Station Sadar, Nagpur.

2. Anti Corruption Bureau,
through its Police Inspector,
having its office at
Administrative Building,
Civil Lines, Nagpur. .... **NON-APPLICANTS**

Mr. R. R. Vyas, Advocate for Applicant.
Mrs. K. R. Deshpande, APP for Non-Applicants 1 & 2/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **10th DECEMBER, 2021.**

ORAL JUDGMENT:

The applicant-Mr. Dilip Deorao Pohekar is arraigned as accused 3 in Special Case 25/2018 and is facing trial for offences punishable under Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Act). Mr. Dilip Deorao Pohekar shall be hereinafter referred to as the accused.

2. The accused preferred application dated 07.08.2018 (Exhibit 36) seeking discharge. The accused contended that even if the entire material in the final report submitted under Section 173 of the Code of Criminal Procedure, 1973 (Code) is taken at face value, commission of offence under the Act cannot be presumed and the material may, at the most, suggest administrative lapses and not criminal culpability. The accused contended, *inter alia*, that he faced departmental inquiry, and while he is held guilty of commission of offence of administrative and procedural lapses, the enquiry report exonerates him of criminal culpability.

3. The application seeking discharge was strenuously opposed by the Public Prosecutor who argued that as Superintending Engineer, In-charge of the Gosikhurd Project, the accused was obligated to follow every rule and procedure, and the accused failed to discharge such obligation. The Public Prosecutor argued that the updation of the value of the work was unwarranted and beyond the administrative power of the accused. The Public Prosecutor referred to the Public Works Division Manual to substantiate the said submission. The Public Prosecutor contended that even the committee of VIDC was empowered to update the value of the work only to the extent of 5%, the

updation recommended and approved was 8.6%, with the result that the enhancement of the estimated value of the tender was Rs.3.33 crores.

4. The learned Special Judge was not impressed by the submissions of the accused, and observing that in view of the recommendation of the accused, there was sufficient material to frame charge, the learned Special Judge was pleased to reject the application seeking discharge vide order dated 30.04.2021.

5. Dissatisfied, the accused is invoking the revisional and inherent power of this Court.

6. I have heard the learned Counsel Mr. Vyas for the accused and the learned Additional Public Prosecutor Mrs. Kalyani Deshpande for the non-applicant.

7. Mr. Vyas would reiterate the submissions, which did not find favour with the learned Special Judge. Mr. Vyas would further rely on the decision of the Hon'ble Supreme Court in ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, Eow, CBI and another, (2020) 9 SCC 636***, which articulates that if

the accused is exonerated on merits in the departmental enquiry, criminal prosecution on the same set of facts and circumstances, cannot be allowed to continue. Mr. Vyas would further rely on the following decisions ;

(i) Abdulla Mohammed Pagarkar etc. v. State (Union Territory of Goa, Daman and Diu), AIR 1980 SC 499,

(ii) C. Chengna Reddy and others v. State of Andhra Pradesh, AIR 1996 SC 3390,

(iii) State of Madhya Pradesh v. Sheetla Sahai and others, (2009) 8 SCC 617,

(iv) Anil Kumar and others v. M.K. Aiyappa and another, (2013) 10 SCC 705,

(v) Niranjan Singh Karam Singh Punjabi v. State of Maharashtra, 1990 Cri.L.J. 1896,

(vi) L. Krishna Reddy v. State by Station House Officer and others, (2014) 14 SCC 401,

(vii) Central Bureau of Investigation, Hyderabad v. K. Narayana Rao, (2012) 9 SCC 512,

(viii) Yogesh Alias Sachin Jagdish Joshi v. State of Maharashtra, (2008) 10 SCC 394,

(ix) Sunil s/o Bhalchandra Shide v. State of Maharashtra, through PS Incharge PS Sadar, Nagpur (Criminal Revision Application 25 of 2019),

(x) Rajiv Thapar and others v. Madan Lal Kapoor, (2013) 3 SCC 330,

(xi) Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293.

8. In rebuttal, the learned Additional Public Prosecutor Mrs. Kalyani Deshpande would argue that even a strong suspicion is sufficient to frame charge and that it would not be appropriate to nip the trial in the bud. Mrs. Kalyani Deshpande would submit that at the stage of framing of charge, it was not expected of the learned Special Judge to look into the defence of the accused or to conduct a mini trial. Mrs. Kalyani Deshpande, however, with her usual fairness, does not dispute that there is no material in the charge-sheet to infer that there is any wrongful loss caused to the State exchequer or wrongful gain to the accused.

9. With the assistance of Mr. Vyas and Mrs. Kalyani Deshpande, I have scrutinized the material in the final report and the incontrovertible material in public domain, which is in the form of the proceedings in the departmental enquiry.

10. It would be necessary to note the case of the prosecution, to the extent of the role attributed to the accused, in order to appreciate the rival contentions. The only allegation in the final report against the accused is that the accused committed misconduct by recommending updation of the value of work of Rs.3.33 crores. The allegation is premised on alleged violation of

rules and procedure.

11. The accused was proceeded against departmentally and the article of charge which corresponds to the gist of the prosecution case is Article-1, which alleges that while recommending updation of the value of the work, certain aspects were incorrectly considered and the updated value suffers from procedural irregularities. Article-1 alleges that as Superintending Engineer, the accused was responsible to ensure that the recommendation of updation is blemish free, and that the accused failed to discharge the duties properly, and in particular failed to discharge the responsibility under paragraphs 141(3) and 142 of the Public Works Division Manual.

12. The Enquiry Officer held charge-1 partially proved. However, the State Government disagreed with the said finding of the Enquiry Officer qua charge-1 and exonerated the accused from the said charge. The other charges were either entirely proved or partially proved.

13. The allegations levelled against the accused in the final report correspond to, and are identical with, the allegations

in charge-1, from which the accused is exonerated in the departmental inquiry. The punishment imposed is on the premise that the accused is guilty of administrative lapses, and therefore, the other charges, which do not have any bearing on the issue involved herein, are held either proved or partially proved. Mr. Vyas is, therefore, justified in submitting that the accused is exonerated from the same set of allegations which formed gravamen of the prosecution case.

14. In *Ashoo Surendranath Tewari v. Deputy Superintendent of Police, Eow, CBI and another*, the Hon'ble Supreme Court noted several decisions and emphasized that the standard of proof in a departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in a criminal proceedings where the case has to be proved beyond reasonable doubt. The Hon'ble Supreme Court noted the findings recorded in the order of the Central Vigilance Commission which held the accused guilty, at the highest, of negligence without criminal culpability, and discharged the accused observing that the chances of conviction in a criminal trial involving the same facts appear to be bleak.

15. Mr. Vyas is justified in drawing support from the articulation of the Hon'ble Supreme Court in *Ashoo Surendranath Tewari v. Deputy Superintendent of Police, Eow, CBI and another.*

16. Even *de hors* the issue considered in *Ashoo Surendranath Tewari v. Deputy Superintendent of Police, Eow, CBI and another*, in my considered view, there is no material in the final report as would be sufficient to infer the commission of offence under the penal provisions of the Act, which are invoked. Sections 13(1)(c) and 13(1)(d) of the Act as were on the statute book prior to the 2018 amendment, read thus :

> *"**13. Criminal misconduct by a public servant** – (1) A public servant is said to commit the offence of criminal misconduct -*
>
> *(a) ……*
>
> *(b) …...*
>
> *(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or*
>
> *(d) if he, -*
>
> *(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or*
>
> *(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or*
>
> *(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."*

17. The *sine qua non* ingredients of Section 13(1)(c) of the Act is dishonest or fraudulent misappropriation or conversion for own use any property entrusted to the accused or under his control, as a public servant or that the accused allows any other person to do so. Section 13(1)(d) of the Act envisages that any valuable thing or pecuniary advantage is obtained by the accused for himself or for any other person by corrupt or illegal means or by abusing his position as a public servant or while holding office as a public servant, the accused obtains from any person any valuable thing or pecuniary advantage without any public interest.

In my considered view, administrative or procedural lapse simplicitor would not be sufficient even to raise strong suspicion of commission of offence in the absence of any material in the final report to *prima facie* suggest that the accused acted with dishonest or fraudulent intent and that, as a fact, the accused obtained any valuable thing or pecuniary advantage, for himself or any other person, or misappropriated or converted any property entrusted to him or under his control.

18. Adverting to the decisions cited by Mr. Vyas, *Abdulla Mohammed Pagarkar etc. v. State (Union Territory of Goa, Daman and Diu)* and *C. Chengna Reddy and others v. State of Andhra*

Pradesh are rendered in appeals preferred challenging the judgments of conviction. *State of Madhya Pradesh v. Sheetla Sahai and others*, *inter alia*, articulates that the recommendations made, by itself may not constitute a criminal misconduct since it was open to the State to ignore the recommendations and to take an appropriate decision on the basis of material on record. *Anil Kumar and others v. M.K. Aiyappa and another* is not relevant in the context of the issue involved and the submissions canvased. The other decisions consider the parameters of discharge and the scope and ambit of the inherent powers under Section 482 of the Code.

19. It is trite law that at the stage of framing the charge, the Court is not expected to act as a mere post office. Limited sifting of material on record, is not only permissible, is expected, and the purpose is to ascertain whether there is a case for proceeding with the trial. It is true that a strong suspicion would suffice. However, the suspicion must be founded on some material which can be translated into evidence. The suspicion cannot be purely subjective based on the moral notions of the Judge nor can the suspicion be in the realm of surmises, conjectures and speculation. In ***Dipakbhai Jagdishchandra Patel v.***

State of Gujarat and another, (2019) 16 SCC 547, the Hon'ble Supreme Court observed thus:

> *"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."*

20. In my considered view, if the material on record is scrutinized on the anvil of settled position of law, the irresistible conclusion is that the material is insufficient to presume the commission of an offence under the Act. The learned Special Judge fell in serious error in rejecting the application seeking discharge, and the order impugned is liable to be set aside, and is

accordingly set aside.

21. The applicant shall stand discharged from offences punishable under Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the Act, registered vide Crime 70/2018 with the Sadar Police Station, Nagpur.

22. The application is allowed in the aforestated terms.

JUDGE

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