

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

CRIMINAL REVISION APPLICATION (REVN) 254 OF 2018

State of Maharashtra,
through Superintendent of Police,
Anti Corruption Bureau, Nagpur

....APPLICANT

VERSUS

1. Umashankar Vasudev Parvate,
aged about 60 yrs, Occ. Retired,
r/o. Plot No. 67, Saraswati Nagar,
Ring Road, Manewada, Nagpur
2. Chandan Tulsiram Jibhkate,
aged about 60 yrs, Occ. Retired,
r/o. Ayurvedic Layout, Umred Road,
Nagpur
3. Dilip Devrao Pohekar,
aged about 59 yrs, Occ. Retired,
r/o. 24 Padole Layout, Ring
Road, Parsodi, Nagpur 22
4. Sopan Ramrao Suryawanshi,
aged about 67 yrs, occ. Retired,
r/o. Malhar, Plot No. 21,
Sahakar Nagar, Usmanpura,
Aurangabad
5. Devendra Parshuram Shrike,
aged about 62 yrs, occ. Retired,
r/o. 50, Isha Wasyam,
Purnwad Nagar, Akashwani,
Gangapur Road, Nasik

.... RESPONDENTS

Mr. M.K. Pathan, APP for the applicant/State.
Mr. P.D. Randive, counsel for respondent 2.
Mr. R.R. Vyas, counsel for respondents 1, 3 & 5.
Mr. P.V. Navlani, counsel for respondent 4.

CORAM : ROHIT B. DEO, J.

DATE : 05.03.2021

ORAL JUDGMENT :

Heard Mr. M.K. Pathan, the learned APP for the applicant/State, Mr. R.R. Vyas, the learned counsel for respondents 1, 3 and 5 and Mr. P.V. Navlani, the learned counsel for respondent 4.

2. The State of Maharashtra is aggrieved by the order dated 24.10.2018, rendered by the Additional Sessions Judge, Nagpur, in Special ACB Case 25/2018, whereby the non-applicants herein are discharged from offences punishable under sections 13(1)(c)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 ("Act"), registered vide Crime 70/2018.

3. The solitary ground on which the accused are discharged is that the chargesheet was filed on 27.7.2018 after the provisions of section 17-A of the Act came into force, and in the

absence of previous approval from the State Government, the Court is precluded from taking cognizance of the offences and further that there was no sanction granted under section 19 of the Act.

4. The learned Additional Sessions Judge reasons thus:

9] I have given my anxious consideration to the submissions advanced by the respective counsels of accused No.1 to 5. It is matter of record that the present chargesheet is filed only for the alleged offences U/s.13(1)(c)(d) R/w 13(1)(b) of P.C. Act. It is also admitted fact on record that the chargesheet was filed on 27/07/2018 i.e. after coming into force the amended provisions of the Prevention of Corruption Act. Therefore, it is evident on the face of record that the present chargesheet is being filed after coming into force of the amended provisions of the P.C. Act i.e. after 26th July, 2018.

10] I found substantial force in the arguments advanced by the learned counsel for the accused that the present case is based on the accusations that the accused No.1 to 5 in discharge of their official functions and duty and they have recommended and have taken decision in their official capacity. Therefore, I am of the considered opinion that the accused No.1 to 5 are covered within the parameters of Section 17(A) of the P.C. Act and therefore it was incumbent upon the part of the investigating agency to obtain previous approval for obtaining sanction order from the competent authority as envisaged U/s. 19 of the P.C. Act.

11] It is the case that the allegations against the accused persons are made for the alleged offences U/s. 13(1)(c)(d) R/w13(1)(b) of P.C. Act. However, this court further makes it very clear that although in absence of any previous approval cognizance of the alleged offences at this juncture cannot be taken that will not result in closing the doors of the investigating agency from alleging the act on the part of the accused persons before the Court of Law.

12] The remedy available with the Investigating Officer would be to apply before the competent authority for grant of approval / sanction order for launching prosecution against the accused persons for the alleged offences. Upon filing such applications it will be open for the competent authority to pass an appropriate order upon taking into consideration the material collected by the investigating agency either to grant or refuse the sanction in their own wisdom as per rules and prevailing law. Investigating Officer would be at liberty to file fresh chargesheet after fulfilling the precondition of obtaining approval for filing prosecution against the accused person as per law.

5. In so far as the applicability of section 17-A of the Act is concerned, I have considered the issue in judgment dated 5.3.2021 in Criminal Application (APL) 410/2019, and have held that the said provisions has no application to the enquiry or investigation undertaken prior to the coming into force of the provisions and the fact that the chargesheet is filed after the provisions came into force, is irrelevant.

6. Paragraph 22 of the decision referred to supra reads thus:

“22. Section 17-A creates an embargo which precludes an enquiry and investigation. The embargo clearly applies only to such enquiry or investigation which is initiated after the coming into force of section 17-A. Any other view, would do violence to the plain language of the statute and would be subversive of the legislative intent. The legislative intent is certainly not to set the clock back to invalidate investigation or enquiry which is undertaken, much less an investigation which is complete, prior to the coming into force of section 17-A. While the legislative intent is to protect honest and responsible public servants where the allegation is relatable to the recommendations made or decisions taken in discharge of official functions or duties, section 17-A must receive a reasonable interpretation, particularly, since the said provision fetters the right of the Investigating Agency to inquiry into a cognizable offence and is vulnerable to the challenge that the statutory scheme, inter alia section 155 of the Code, is dented. It is stated at the bar that the Supreme Court has issued notice in Special Leave Petition challenging the constitutional validity of section 17-A.”

7. In so far as sanction under section 19 of the Act is concerned, all the accused stood retired prior to 26.7.2018 i.e. before the filing of the chargesheet. In view of the settled position of law, it was not necessary to obtain sanction under section 19 of

the Act.

8. The learned Additional Sessions Judge has not considered the other contentions in support of the discharge applications since the learned Additional Sessions Judge wrongly assumed that previous approval is required. In this view of the matter, while the order of discharge impugned is quashed and set aside, the learned Additional Sessions Judge is directed to decide the discharge applications of the accused afresh and record finding qua the contention that the material on record is not sufficient to warrant a trial.

9. The accused shall appear before the learned Additional Sessions Judge on 16th March, 2021 and shall bring this order to the notice of the learned Judge.

10. The learned APP Mr. M.K. Pathan is requested to forward a copy of this judgment to the learned District Government Pleader and Public Prosecutor, to enable him to appear before the learned Additional Sessions Judge on 16th March, 2021.

11. The learned Additional Sessions Judge shall decide the discharge applications within the next 15 days and if the discharge applications are found unmerited, to conduct and conclude the trial, as expeditiously as possible, and in any event, within the next six months.

Judge

Belkhede