

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

CRIMINAL APPLICATION NO. 1741 OF 2020

Sunil S/o Yadavrao Doke,	]	
Age : 51 Years, Occu : Service,	]	
Serving as Police Head Constable,	]	
R/o Labour Colony, Latur,	]	
Tq. & Dist. Latur.	]	... Applicant.

Versus

1.	The State of Maharashtra,	]	
	Through Police Station Officer,	]	
	Police Station, Ausa,	]	
	Tq. Ausa, Dist. Latur.	]	
2.	Deelip S/o Bhanudas Jodtale,	]	
	Age : 55 Years, Occu. : Agril.,	]	
	R/o Hasegaon Wadi,	]	
	Tq. Ausa, Dist. Latur.	]	... Respondents.

...

Mr. H. V. Patil, Advocate for Applicant.

Mr. S. J. Salgare, APP for Respondent No.1-State.

Mr. Rupesh A. Jaiswal, Advocate for Respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 6th SEPTEMBER, 2022

PRONOUNCED ON : 14th OCTOBER, 2022

ORDER :

Present application has been filed by the original accused, invoking the inherent powers of this Court under section 482 of the Code of

Criminal Procedure for quashing offence registered against him, vide C.R. No.178 of 2020 with Ausa Police Station, District Latur for the offence punishable under section 7 of the Prevention of Corruption Act, 1988.

2. The applicant is serving as a police head constable with Police Station Ausa. He was appointed in the police department in the year 1992 and he says that he has served with unblemished record. The respondent No.2 has filed the said F.I.R. against the applicant with Anti Corruption Bureau, Latur first in the form of complaint and thereafter the FIR has been lodged.

3. Heard learned Advocate Mr. Patil for the applicant, learned APP Mr. Salgare for Respondent No.1 and learned Advocate Mr. Jaiswal for respondent No.2.

4. It has been vehemently submitted on behalf of the applicant that when the applicant was attached to police station Ausa, one Venkat Shendge resident of Hasegaonwadi had lodged a complaint against respondent No.2 and his family members on 11-07-2020. The said FIR/complaint was given to the applicant for investigation. The applicant considering the nature of the dispute had taken action under section 149 of the Code of Criminal Procedure against respondent No.2, his wife and two sons by accepting the personal bond for good behaviour on 13-07-2020. That complaint was closed. According to the applicant the respondent no.2 got annoyed with this fact i.e.

the action taken by the applicant against him and it appears that he has given a false complaint.

5. The case of the applicant is that respondent No.2 had given a complaint on 11-08-2020 against his brother Nagnath about the dispute that had taken place between them. Respondent No.2 appears to be expecting arrest of brother, however taking into consideration the nature of the complaint, it was registered as non-cognizable offence and no question arose for the arrest of the brother of respondent no.2. Again respondent no.2 had filed a complaint on 17-08-2020 by making allegations that he had given phone call on 22-07-2020 to Dy. S.P. Shri Bedre stating that a public servant has demanded bribe from him. That complaint is against the present applicant. It is then stated that amount of Rs.3,000/- was demanded by the applicant for not taking any action against respondent No.2. It is further prosecution story in the FIR that a trap was arranged after the alleged verification of the demand. However, the applicant had not accepted the bribe amount and therefore offence under section 7 of the Prevention of Corruption Act has been lodged. Now, the investigation is over and charge-sheet is also filed.

6. If the entire charge-sheet is also perused, then it appears that no other witness is supporting the prosecution story except the persons from the raiding party. The statement given by the witnesses are stereotyped, i.e. copy paste. There was no recovery of money from the applicant. The theory of

demand of money is false and concocted. It is the outcome of the annoyance and thrusting of the amount was also not been able to possible for the respondent No.2. Further concoction has been made. It would be a futile exercise to ask the applicant to face the trial when he has absolutely not committed any offence. This is a fit case where the entire proceedings including the FIR should be quashed and set aside.

7. Learned APP strongly submitted that there is *prima facie* evidence against the present applicant when even demand of the bribe is an offence under section 7 of the Prevention of Corruption Act, we are required to consider that evidence. The said demand at the time of verification has been reiterated and recorded by means of voice recorder and the said voice recorder clip was sent for forensic analysis. The report has been received on 25-07-2022 i.e. after the filing of the charge-sheet and copy of the same has been produced now before this Court which says, “the auditory analysis subsequent spectrographic analysis revealed that, the questioned voice exhibit of speaker marked Exhibit-1 matches with the specimen voice exhibit of speaker marked Exhibit 2 (said to Shri Sunil Yadavrao Doke)”. The prayers in the application cannot be within the scope and ambit of section 482 of the Code of Criminal Procedure.

8. Per contra, learned advocate appearing for the respondent No.2 informant has also relied on the affidavit-in-reply and the contents of the

charge-sheet and submits that it is the true fact that Venkat had given a complaint against him and his family members and the applicant had taken action under section 149 of the Code of Criminal Procedure. However, it is denied by the respondent No.2 that he was annoyed with the applicant. He had filed complaint against his brother later. However, when the law is to take its own course he was not expecting that his brother should be put behind the bars. There was no such dialogue between him and the applicant. The demand was made of Rs.3,000/- on 22-07-2020 by the applicant to the respondent No.2 for not taking action against respondent No.2 on the complaint of Venkat Shendge. The conversation between the applicant and respondent No.2 has been recorded. Panchnama with the transcript has been given.

9. At the outset, it is required to be considered as to what is the scope of section 482 of the Code of Criminal Procedure and whether entire evidence can be appreciated by this Court at this stage. We are guided by Hon'ble Supreme Court in various judgments on the point of the scope of section 482 of the Code of Criminal Procedure. Few such decisions are required to be considered. A three Judge Bench of the Hon'ble Supreme Court in ***State Of Karnataka Vs L. Muniswamy & Ors.*** reported in ***(1977) 2 SCC 699*** has held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would amount to an

abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. Further in *State of Karnataka Vs. M. Devendrappa & Anr.* reported in (2002) 3 SCC 89, the Hon'ble Apex Court has laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. Further, the ratio laid down in *State of Haryana Vs. Bhajan Lal*, reported in AIR 1992 SC 604 has been reiterated in *Sundar Babu & Ors. Vs. State of Tamil Nadu*, reported in 2009 14 SC 244 and it has been laid down that where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge then the High Court can exercise its inherent jurisdiction under section 482 of the Code of Criminal Procedure. However, in ***Paramjeet Batra Vs. State Of Uttarakhand & Ors.*** reported in ***(2013) 11 SCC 673***, it has been observed by the Hon'ble Apex Court that while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence.

10. In ***M/s. Zandu Pharmaceutical Works Limited Vs. Md. Sharaful Haque & Anr.*** reported in ***(2005) 1 SCC 122***, it has been observed after taking note of various decisions that, "the High Court has wide powers under section 482 of the Code of Criminal Procedure and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent

power should not be exercised to stifle a legitimate prosecution.” ...of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing. However, it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. ...It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. When an information is lodged at the police station and an offence is registered, then the malafides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led the court to decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

11. In *State of Madhya Pradesh Vs. Awadh Kishore Gupta And Ors.* reported in *(2004) 1 SCC 691*, wherein also the application was filed by the public servant for quashing of the investigation and the proceedings under the Prevention of Corruption Act by intending to exercise the inherent jurisdiction under section 482 of the Code of Criminal Procedure, the Hon'ble Apex Court

has considered the scope of section. The ratio laid down in *R.P. Kapur v. State of Punjab*, reported in *AIR 1960 SC 866*, were reiterated and it is further observed that in view of the earlier decision in *Chand Dhawan (Smt.) Vs. Jawahar Lal and Ors.* reported in *1992 (3) SCC 317*, that the Court should not act on annexures to the petitions under section 482 of the Code of Criminal Procedure which cannot be termed as evidence without being tested and proved. When the material relied upon by the party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable.

12. Thus the ratio in all above cases would show that this court is expected to use its powers under section 482 of the Code of Criminal Procedure sparingly and appreciation of evidence collected and forming part of charge-sheet is not required to be meticulously analyzed. By keeping the ratio of all the above authorities in mind we are required to proceed further. Taking into consideration the contents of the FIR and the material that is collected and forming part of charge-sheet would show that allegedly there was a demand of amount by the applicant to the complainant and then the complaint had been lodged with Anti Corruption Bureau. Verification was arranged and it was recorded. Thereafter, there were attempts to have raid and to catch the applicant while accepting the bribe. However, the second part, i.e. catching of the applicant with the tainted money could not succeed.

It might have happened because the applicant would have smell a foul play, but then the fact remains that there was a demand and the said dialogues between the informant and the applicant were recorded. Now, the forensic report has also been received.

13. As regards the defence that has been taken by the applicant is concerned that due to some action and some inaction on his part the respondent No.2 was annoyed with him; he is required to prove it at the time of trial. It cannot be so appreciated. Merely because, he had taken action against respondent no.2 we cannot *per se* infer that the subsequent action on the part of respondent No.2 was with malafide intention. Though the fact remains that the said complaint lodged by Venkat against the respondent No.2 was closed by taking personal bond, however, it is to be noted that, said bond was for good behavior and if there would have been any such behavior on the part of the complainant the applicant could have made use of that proceeding. *Prima facie*, malafides cannot be so inferred and therefore when the defence is required to be proved by the applicant, this cannot be a fit case where the FIR as well as charge-sheet should be quashed and set aside.

14. The application stands rejected.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)