

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 240 OF 2016

The State of Maharashtra
Through Public Prosecutor
High Court Bench at Aurangabad
Through Dy. Superintendent of
Police (ACB), Ahmednagar

...Petitioner

versus

Sayyad Jamadar Mohammad
Age 58 years, Occ. Service
R/o. Mukundnagar, Ahmednagar
District Ahmednagar

...Respondent
(Ori. accused)

AND

CRIMINAL REVISION APPLICATION NO. 241 OF 2016

The State of Maharashtra
Through Public Prosecutor
High Court Bench at Aurangabad
Through Dy. Superintendent of
Police (ACB), Ahmednagar

...Petitioner

versus

Jagdish Jayram Kshetre,
Age 46 years, Occ. Service
R/o. Alamgeer, Bhingar Ahmednagar
District Ahmednagar

...Respondent
(Ori. accused)

AND

CRIMINAL APPLICATION NO. 1930 OF 2021

IN

CRIMINAL REVISION APPLICATION NO. 240 OF 2016

Ashok Babanrao Jadhav and another

...Applicants

versus

The State of Maharashtra and another

...Respondents

.....

Ms. P. V. Diggikar, A.P.P. for petitioner
Mr. Govind Kulkarni h/f Mr. D.R. Deshmukh, advocate for respondents

Mr. C.P. Sengaonkar, advocate for applicants in criminal application No. 1930 of 2021.

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CORAM : BHARAT P. DESHPANDE, J.

**Date of Reserving
the Judgment : 01.08.2022**

**Date of pronouncing
the Judgment : 03.08.2022**

JUDGMENT:-

1. Both these Criminal Revision Applications are filed by the State of Maharashtra thereby challenging the orders dated 1.12.2015 of discharge of original accused Nos. 3 and 4 in Special Case (ACB) No. 4 of 2014 passed below Exh. 24 and 26 respectively, by the Additional Sessions Judge, Ahmednagar.

2. On the basis of F.I.R. lodged by the informant Ashok Deore, the Police Sub Inspector, ACB, Ahmednagar, the offence stands registered against five accused persons for the offences punishable under Sections 7, 12, 13 (1) (d) r.w. 13(2) of Prevention of Corruption Act, 1988. Respondent Sayyad Jamadar Mohammad in criminal revision application No. 240 of 2016 is original accused No.3 whereas respondent Jagdish Jayram Kshetre in criminal revision application No. 241 of 2016 is original accused No.4.

3. On 29.8.2013, the informant alongwith his staff members visited Bodhegaon. While returning from said village, they came

near Bodhegaon Phata. They saw one Government jeep by the side of road and two police officers standing near it. The said police officers signaled the driver of jeep of the informant to stop. The informant and his team were in a private jeep. The informant then asked his driver to go and meet said police officers, who signaled to stop. Accordingly, his driver by name Nashir Shaikh went and met police officers and then returned and informed that there is a joint checking going on by traffic police and M.S.R.T.C. officers. They told the driver to deposit fine of Rs.1000/-, as the jeep was having excessive passengers. The driver accordingly informed ACB officers. The informant then sent his driver to verify whether there is demand of bribe by the traffic police. The driver Nashir Shaikh returned and stated that the matter is settled for Rs.500/-. Accordingly ACB officers decided to give Rs.500/- to concerned police. Accordingly, he obtained signatures of two panch witnesses on a currency note and through his driver Nashir Shaikh, it was handed over to the persons after demand of bribe amount. As per instructions, Nashir Shaikh came near Government vehicle and on demand handed over amount to the said traffic cell officer and M.S.R.T.C. officers who accepted it. The driver then informed ACB officers. Immediately, upon getting signal from the driver Nashir Shaikh, squad of ACB sitting in the vehicle rushed to the jeep and questioned the persons who accepted bribe. Immediately, panchnama was conducted and currency note of Rs.500/- was found lying on the seat of the said jeep. The driver Nashir Shaikh and panch witness pointed out the

police constable who accepted the bribe.

4. It is specifically claimed that accused Nos. 3 and 4 who went out of police jeep for easing out, gave their consent for demand and acceptance of bribe though they were not present in the jeep at the time of acceptance of bribe by the constable.

5. With these facts, the investigation was carried out and charge sheet was filed.

6. On filing application for discharge under Section 227 of Cr.P.C. by accused Nos. 3 and 4 and after obtaining say of the prosecution, learned Additional Sessions Judge, Ahmednagar observed that there is absolutely no materiel against accused Nos. 3 and 4 found in the charge sheet so also to frame charge. Both these accused persons were not present when the alleged bribe amount was accepted. Accordingly, their applications for discharge are allowed, which are assailed on behalf of prosecution before this Court.

7. Heard learned A.P.P. for the applicant-State and learned counsel appearing for both the respondents. With the assistance of learned A.P.P., I have perused the record.

8. Learned A.P.P. forcefully submitted that when demand was made by the constable, both accused persons were sitting in the

vehicle and they did not speak or object to it and therefore, they consented for such demand. She, therefore, submitted that aspect of their consent has to be tested during trial. She submitted that learned trial court completely lost this aspect and discharged accused which needs to be interfered with. She submitted that there is strong suspicion against the both accused persons since both of them were present in the jeep.

9. Learned counsel appearing for both the respondents/ accused Nos. 3 and 4 forcefully submitted that the impugned orders are perfectly justified and no interference is necessary. Accused No.4 Jagdish was working as Assistant Traffic Controller of M.S.R.T.C. There was a joint inspection by the traffic police and the M.S.R.T.C. officers. Accused No.4 Jagdish had nothing to do with duty of the traffic Cell which they were performing at the relevant time.

10. Accused No.4 Jagdish was the Assistant Traffic Officer whereas accused No.3 Sayyad Jmadar Mohammad was R.T.O. officer. His job was only to conduct inspection of documents of the vehicles. He was not present in the vehicle when alleged bribe was accepted by accused No.1.

11. Learned Additional Sessions Judge passed separate orders below Exh.24 and 26, however, reasons in both these orders are same. Therefore, reasons disclosed in one order could be

considered for deciding both these matters.

12. A short question which cropped up in the present revision petitions is whether impugned orders are perverse and illegal so as to interfere with it in revision jurisdiction and my answer to it is in negative for the following reasons.

13. In order to frame charge under Section 7 of Prevention of Corruption Act 1988, it is *sine qua non* that the investigating agency has to prove *prima facie* that there is demand and acceptance of illegal gratification by public servant. Thus admittedly, there is no demand made by accused Nos. 3 and 4 from driver or from any member of flying squad of ACB on that day. The F.I.R. clearly shows that driver by name Nashir Shaikh went near the officers and then returned to informant. At that time, he disclosed that the traffic cell alongwith officers of M.S.R.T.C. are conducting a joint inspection. He then stated that there is demand of Rs.1000/- as fine since they found 10 passengers travelling in the vehicle. The informant then asked the driver to go and inquire whether there is any demand of bribe. Accordingly, driver Nashir Shaikh went near the said officers and then returned and told the informant that one constable of traffic cell told him that if he is not interested in paying fine, he has to pay Rs.500/-. He then stated in his statement recorded under Section 161 of Cr.P.C. that at that time, the officer wearing Khaki dress and sitting on the front seat and officer who was standing by the left front

door, heard the above discussion of demand of Rs.500/- and then consented to it and went away from vehicle for the purpose of easing out. Admittedly, these two officers who are respondents herein.

14. The driver Nashir Shaikh then stated that thereafter he alongwith one panch carried the currency note of Rs.500/- with signature of panch witnesses and went towards police jeep. At that time, traffic cell police who was sitting on the middle seat asked him whether he brought money and thereafter he handed over Rs.500/- to the said traffic cell police who accepted it and then returned key of his vehicle. He did not issue any receipt for receiving Rs.500/- as fine. Therefore, he gave signal to ACB team which immediately came near the police vehicle. The panch witness No.1 confirmed above fact.

15. Entire charge sheet nowhere discloses any other material against accused Nos. 3 and 4 except the above fact that they after giving their silent consent went away from the jeep.

16. The powers under Section 227 of Cr.P.C. are discussed in catena of decisions of the Apex Court. In the case of **Sajjan Kumar vs. CBI [(2010) 9 SCC 368]**, the Apex Court after considering scope of Sections 227 and 228 of Cr.P.C. laid down principles in para 21 which read as under:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting

the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

Point Nos. ii, vi and vii, as quoted above, are very material for the purpose of deciding the present matters.

17. It is well settled that where material placed before the court, it is expected from the trial court to exercise its judicial mind to determine as to whether the case for trial has been made out or not. While doing so, the court is not supposed to hold mini trial by marshaling evidence on record. Similarly, it is well settled that on the basis of material placed before it, court comes to an opinion that no case is made out for framing charge, it would be fully justified in discharging the accused. The material which is required to be evaluated by the court at the time of framing of charge should be the material which is produced and relied upon by the prosecution. While rejecting such material, it is not necessary to meticulously examine as it would render exercise of mini trial to find out guilt. What is necessary is that the court must be satisfied that evidence collected by the prosecution is sufficient to presume that accused

has committed offence. If there is only some suspicion and not grave suspicion, court is entitled to discharge the accused.

18. While exercising such jurisdiction and on perusal of entire charge sheet, it is clear from record that ingredients of Sections 7, 13(1) (d) r.w. 13(2) of Prevention of Corruption Act, 1988 are not at all made out against accused Nos. 3 and 4. There is absolutely no demand of bribe amount by these accused persons. The only contention of the prosecution that presence of all these persons in the vehicle at the time of alleged demand by accused No.1 shows their consent, cannot be accepted, as for the simple reason such contention cannot be presumed as giving consent. Keeping silence at the time of alleged demand by other accused persons cannot by any stretch of imagination be considered as consent.

19. Similarly, it is an admitted fact that at the time of alleged acceptance of demand by accused No.1, accused Nos. 3 and 4 were not present in the jeep. Thus, from both counts, the contentions raised by learned A.P.P. while assailing the order of trial court cannot be accepted.

20. Learned Additional Sessions Judge, Ahmednagar in its detailed and reasoned order considered both these aspects and found that no ingredients of offences alleged in the charge sheet are made out against accused Nos. 3 and 4. Thus, the finding are based

on the material placed alongwith charge sheet. In no way such observations could be termed as illegal or perverse so as to interfere with it within revisional powers of this Court

21. Having said so, the grounds raised in both these revision applications are devoid of merit and therefore, criminal revision applications deserve to be rejected. Hence following order:-

O R D E R

- I. Criminal Revision application Nos. 240 of 2016 and 241 of 2016 stand rejected.
- II. Criminal application No. 1930 of 2021 stands disposed of accordingly.
- III. Record and proceedings be returned to the trial court forthwith.

(BHARAT P. DESHPANDE, J.)

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