

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

CRIMINAL APPLICATION [APL] No. 298/2022.

Sopan Ramrao Suryavanshi,
Aged about 70 years, Occupation -
Retired, Resident of 21, Manas
Sahakar Nagar, New Osmanpura,
Aurangabad 431005.

... **APPLICANT.**

VERSUS

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

... **NON-APPLICANT.**

Mr. S.D. Dewani, Advocate for the Applicant.
Mr.S.M. Ukey, Addl.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 10, 2022.

ORAL JUDGMENT :

Heard learned counsel for the parties. By their consent

2

Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. Rejection of discharge application by the Special Judge vide order dated 30.04.2021, caused the applicant to invoke the inherent powers of this Court. The applicant namely Sopan Suryavanshi has been arrayed as an accused in Session Trial No.25/2018 for the offence punishable under Sections 13[1][c], 13[1][d] read with Section 13[2] of the Prevention of Corruption Act, 1988.

3. The applicant has applied for discharge stating that the material in the charge sheet, even if taken as it stand, the commission of offence under the Act cannot be construed. It is submitted that even a case of strong suspicion has not been made out. Primely it is argued that the applicant has faced departmental enquiry on same charges, however, he has been exonerated and thus, as per law laid down by the Hon'ble Supreme Court in case of **Ashoo Surendranath Tewari .vrs. Deputy Superintendent of Police,**

Rgd.

3

EOW, CBI and another (2020) 9 SCC 636, criminal prosecution would not lie. The prosecution has opposed the application for discharge in trial Court on which it was rejected and therefore, this application.

4. The learned counsel for the applicant initially submitted that the case of applicant is squarely covered by two successive orders of this Court wherein the co-accused facing similar charges with same material have been discharged. He has placed reliance on the decisions of this Court in cases of (1) **Dilip Deorao Pohekar .vrs. The State of Maharashtra and another – Criminal Revision Application No.92/2021 decided on 10.12.2021** and (2) **Devendra Parshuram Shirke .vrs. The State of Maharashtra - Criminal Revision Application No.129/2021 decided on 23.12.2021**.

5. It is argued that similar allegations are leveled against the applicant, however, this Court took a view that as per law laid down by the Supreme Court in case of *Ashoo Tewari* (supra), the criminal prosecution would not lie. In said case, the Supreme Court has made

4

an exposition of law that, if the accused has been exonerated in the departmental enquiry on merits, criminal prosecution on the same set of facts cannot be allowed to continue.

6. The learned Addl.P.P. has not disputed the factual aspect that the applicant is facing similar charges, as well as he has been exonerated in the departmental enquiry for relevant charges. He has also not disputed that the case of the applicant falls on same footing as that of the co-accused, who have been discharged by this Court in above referred two criminal revision applications.

7. Besides that, I have considered the relevant facts pressed against the applicant. The applicant was posted as Chief Engineer of Gosikhurd Project during September 2005 til June 2009, and he retired by way of superannuation in the year 2009. The concerned crime bearing Crime No.70/2018 was registered after 10 years i.e. in the year 2018 by the Anti Corruption Bureau, Nagpur. It is alleged by the prosecution that the applicant has illegally updated the original tender cost, which is beyond the powers of the Committee.

5

The main allegations is about recommendations for updation of valuation of work. The role attributed to the accused in the initial report is that he has committed misconduct by recommending updation of value of the work. Undisputedly, the applicant faced the departmental enquiry, however, in appeal he has been exonerated from the said charges. In the above referred decision in case of *Ashoo Tewari (supra)*, the Supreme Court has emphasized that the standard of proof in the departmental enquiry proceedings is of preponderance of probabilities, whilst the standard of proof in criminal proceeding is a proof beyond reasonable doubt. On that basis, it has been held that in case of exoneration of the accused in the departmental enquiry, criminal prosecution would not continue.

8. It is a settled law that at the stage of framing charges, though meticulous marshaling of material is not required, however, it is permissible for the Court to sift the material with a view to ascertain whether there is a case for proceeding with the trial. In case of suspicion, it must be founded on some material which can be translated into evidence. On careful scrutiny of the material on the

6

basis of settled legal position, the conclusion is that it is insufficient to presume commission of offence, inasmuch as it was not disputed by the State that other two co-accused have been discharged by this Court on same footing, and thus, the applicant has made out a case for discharge.

9. In that view of the matter, the impugned order passed by the Special Judge, (ACB) Nagpur in Special Case No.25/2018 dated 30.04.2021 is quashed and set aside. The applicant – Sopan Ramrao Suryawanshi is discharged from the offence punishable under Sections 13[1][c], 13[1][d] read with Section 13[2] of the Prevention of Corruption Act, 1988 registered vide Crime No.70/2018 by the Sadar Police Station, Nagpur.

10. Criminal Application is accordingly allowed and disposed of.

JUDGE