

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 571 OF 2023

Bhaskar s/o Ramhari Aher

...Applicant

VERSUS

The State of Maharashtra and Another

...Respondents

.....

Ms. Anagha V. Rotte, Advocate for the applicant.

Mr. M.M. Nerlikar, APP for respondent No. 1

.....

CORAM : MANGESH S. PATIL AND
NITIN B. SURYAWANSHI, JJ.

DATE : 31st MARCH, 2023

ORDER (PER: NITIN B. SURYAWANSHI, J.)

1. By this application filed under section 482 of Code of Criminal Procedure, 1973, the applicant who is Police Head Constable, seeks quashing of FIR in Crime No. 123 of 2021, registered with Gondli Police Station, District- Jalna, under section 7 of Prevention of Corruption Act, 1988 (for short 'said Act').

2. Pertinently, applicant had filed Criminal Application No. 1146 of 2021 for quashing of FIR, by raising same grounds albeit by different advocate. After hearing said application following order was passed, (Coram: Sunil P. Deshmukh And N.B. Suryawanshi, JJ.):

"1. After hearing for quite some time, when this Court was not inclined to accede to the request of the applicant, learned Advocate for the applicant, on instructions, seeks permission to withdraw the application.

2. Application is disposed of as withdrawn."

3. In the present application in sub paragraph of paragraph no. 2 (Page No. 4), the applicant has made following statement:

'The applicant submits that, above mentioned previous Criminal Application was not decided on merit. It was simply withdrawn.'

4. Explanation of learned advocate for the applicant was sought in respect of above statement. She replied that it was her impression. The explanation is unacceptable as no such impression can be gathered from the order passed by this Court on 09.09.2021.

5. An understanding was given to learned advocate for the applicant that we are not inclined to entertain this application and application may be withdrawn. She has however insisted for arguing the application on merits.

6. Heard Ms. Anagha Rotte, Advocate for the applicant

and Mr. M.M. Nerlikar, Additional Public Prosecutor for respondent No. 1. Perused the grounds raised in the application, documents annexed thereto and the FIR.

7. Learned advocate for the applicant submits that on plain reading of FIR, no offence under section 7 of the said Act is made out against the applicant. The demand alleged in the FIR is vague and there is no acceptance of alleged gratification amount. According to her, there is change in circumstance as Constitution Bench judgment is rendered in Neeraj Dutta vs. State (Govt. Of N.C.T. Of Delhi) (Criminal Appeal No. 1669 of 2009), which according to her supports her case, though two years period is lapsed, since registration of FIR, no charge sheet is filed, in the present crime and the applicant is likely to retire in the near future. According to her in view of ratio in State of Haryana and Others vs. Ch. Bhajan Lal and Others, 1992 AIR 604, application deserves to be allowed due to change in circumstance.

8. The present application is filed literally seeking review of the order passed by this Court on 09.09.2021, which is not permissible in law. This Court after hearing the then learned advocate for the applicant on merits, since was not inclined to

grant relief, had shown indulgence to the applicant by permitting to withdraw the application. The learned advocate representing the applicant since did not want to invite observations on merits, he had rightly sought permission to withdraw the application, which was in the interest of applicant.

9. This application in our opinion is ill advised and misconceived. There is absolutely no change in circumstance as is claimed by learned advocate for the applicant.

10. Even on merits, language of Section 7 of the said Act is plain and simple and the accused who agrees to accept any gratification is liable to be prosecuted and punished, if found guilty, in terms of section 7 of the said Act.

11. The application is devoid of merit and is dismissed with costs of Rs. 25,000/- (Rupees Twenty Five Thousand), to be paid by the applicant to District Legal Aid Services Authority, Jalna, within two weeks from the date of receipt of this order. If the applicant fails to deposit the costs, same shall be recovered from the applicant by adopting coercive measures.

[NITIN B. SURYAWANSHI, J.]

[MANGESH S. PATIL, J.]