

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1514 OF 2022

Anil Sambhaji Khillare,
Age: 45 year, Occu: Service,
R/o. Saraswati Nagar, Parbhani,
Tq. & Dist. Parbhani.

... Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Mondha,
Parbhani, Tq. & Dist. Parbhani.

2. Gajanan Ramprasad Samale,
Age: 32 year, Occu: Agri.
R/o. Takali Kumbhakarn,
Tq. & Dist. Parbhani.

... Respondents

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Mr. Mayur Salunke, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1 /State.

Ms. Nikita N. Gore, Advocate for Respondent No.2. (Appointed).

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CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

RESERVED ON : 12th July, 2023.

PRONOUNCED ON : 29th August, 2023.

JUDGMENT : (Per Sanjay A. Deshmukh, J.)

1 Rule. Rule made returnable forthwith and heard finally by
the consent of the parties.

2 This is an application under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the First Information Report bearing Crime No.104 of 2022 dated 16th March, 2022, registered with Mondha Police Station, Parbhani, District Parbhani, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and the consequential charge-sheet bearing No.44 of 2023, filed in Special Case (ACB) No.29 of 2023.

3 It is averred in the report that the complainant is resident of Takali Kumbhakarn, Tahsil and District Parbhani. The complainant got plot No.114 at village Vedantwadi, which was allotted by the village *Panchayat*. An amount of Rs.10,000/- was to be deposited by each plot holder in the gram *Panchayat* for which receipt was to be issued. The applicant is the Village Development Officer / Gramsevak. He demanded Rs.10,000/- for recording the name of the complainant to the form No.8 of the assessment form. The complainant, therefore, went to the office of Anti-Corruption Bureau, Parbhani on 16th March, 2023. His complaint in writing was taken up.

The Deputy Superintendent of Police, ACB Shri Bidve, in order to verify the demand made by the applicant, called two Panchas, viz. Mahadeo Gangadhar Kande and Ramkishan Sakharam Mohite. The complainant was directed to tell averments in the complaint orally to both the Panchas. The verification of demand of bribe amount was planned. The complainant made phone call to the applicant. That time, applicant called the complainant at the Pandurang Traders, a shop at station road Parbhani. The complainant alongwith Panch No.1 Mahadeo Kande went there with digital voice recorder. That time, applicant demanded bribe of Rs.10,000/- for recording his name to the Form No.8 of village *Panchayat's* record to his plot. After negotiations, an amount of bribe of Rs.9,000/- was settled. The said conversation was recorded in the memory card of digital voice recorder. The memory card of the said conversation was taken into custody by the Deputy Superintendent, ACB and its *Panchanama* was drawn up.

4 In the afternoon, a trap for accepting of the bribe amount was planned in the office of Anti-corruption Bureau, Parbhani. Panchas and police officials of the trap team were accordingly, instructed about the Anthracene powder and its effect if seen in the lamp of ultraviolet light etc. An amount of Rs.9,000/- i.e. 18 currency

notes of 500 denomination were handed over to the complainant to which, Anthracene powder was applied and those were kept in the envelope. It was kept in the left pocket of the shirt of complainant. Panch No.1 Mahadeo Kande and the complainant proceeded to the shop viz. Pandurang Traders. The applicant demanded Rs.9,000/- to the complainant. Accordingly, complainant handed over Rs.9,000/- to the applicant. The applicant accepted that bribe amount and put it into the left pocket of his pant. The complainant made signal by taking out handkerchief from his neck and tied it around his head. After receiving that signal, the members of the trap team i.e. *Panchas* etc. went there and the applicant was caught hold. The bribe amount was taken into custody and observed in the presence of the *Panchas* with ultraviolet lamp. Those currency notes were glittering.

5 The conversation between Panch No.1 and the applicant was also recorded there with the digital voice recorder. Its memory card was seized. Trap *Panchanama* was drawn up. Thereafter, the report was lodged by the officer of ACB, Parbhani in the Police Station Parbhani. Further investigation was carried out. The sanction to prosecute the applicant was obtained. The charge-sheet is filed in the special Court.

6 The learned counsel for the applicant argued that there is no *prima-facie* evidence of demand and acceptance of the bribe amount. Therefore, sanction for prosecution is illegally granted. He further argued that the alleged incident of taking of bribe did not take place in the office of the applicant. The applicant never demanded the bribe amount. There was resolution of the village Panchayat for transferring of plot in the name of beneficiary subject to depositing of Rs.10,000/- each. Therefore, allegation of demand and receiving of an amount of Rs.9,000/- by applicant was not illegal. It is not overt act of demand and acceptance of bribe amount on the part of the applicant. He pointed out some receipts of receiving Rs.10,000/- from the other plot holders. He further submitted that the script of conversation between the complainant and the applicant does not show that the applicant demanded bribe to the complainant. He lastly prayed to allow the application by quashing the report and the consequential charge-sheet.

7 The learned APP for the State and the learned appointed counsel for the complainant strongly opposed the application by contending that there is strong, *prima-facie*, evidence of digital voice recorder against the applicant, which shows that he demanded and

settled Rs.9,000/- finally. They prayed to reject the application.

8 Perused the charge-sheet. The script of conversation between the applicant and the complainant shows that the applicant said that “not less than Rs.10,000/-”, “give Rs.1,000/- less” and “come to station road at Pandurang Traders”. This conversation was recorded in the memory card of digital voice recorder in the presence of *Panch* witnesses.

9 The statements of *Panch* witnesses and *Panchanama* of acceptance and seizure of bribe amount, *prima-facie*, establish that the applicant accepted the bribe amount of Rs.9,000/-. Sanction to prosecute the applicant is also granted by the competent authority. Though there is resolution of the village *Panchayat* for acceptance of the specific amount of Rs.10,000/- from each of the plot holder, it cannot be *prima-facie* believed that Rs.9,000/- accepted by the applicant was that amount and it was not bribe amount. Reasonable prudent man will not accept that the applicant was empowered to reduce the amount of Rs.1,000/- out of Rs.10,000/- against the resolution of village *Panchayat* and to accept Rs.9,000/-. It is not *prima-facie* acceptable that other plot holders have deposited each Rs.10,000/- as the fees of the plots in the bank account of the village

Panchayat and complainant agreed to pay cash amount to the applicant. Therefore, these receipts of Rs.10,000/- filed by the applicant cannot be accepted at this stage as acceptable defence of the applicant.

10 The defence of the applicant in the statement dated 17th March, 2022 recorded by the investigating officer that he was forced to accept bribe amount is not probable and acceptable for this proceeding of quashment. Thus, *prima-facie*, it establishes that the applicant has demanded the bribe amount of Rs.10,000/- and lastly demanded Rs.9,000/-. There is no substance in the grounds raised by the applicant. The essential ingredients that demand and acceptance of bribe amount with sanction to prosecute the applicant are *prima-facie* established. All these facts show that there is, *prima-facie*, material against the applicant.

11 For the reasons discussed above, the argument of the learned counsel for applicant that impugned criminal proceeding against the applicant would be abuse of process of Court is not accepted. The application deserves to be rejected. The application is rejected. No costs. Rule stands discharged.

12 It is clarified that all the above observations are *prima-facie* in nature and the Trial Court shall not get influenced by the same.

13 Fees of the learned appointed counsel is quantified as Rs.7,000/- to be paid through the High Court Legal Services Authority.

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[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]