

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

CRIMINAL WRIT PETITION NO. 1186 OF 2022

Bapusaheb Khanderao shivarkar

VERSUS

The State of Maharashtra

Mr. Joydeep Chatterji, Advocate for the petitioner

Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : R. M. JOSHI, J.

RESERVED ON : 09/08/2023

PRONOUNCED ON : 18/08/2023

ORDER :-

1. The petitioner who is an accused in Special Case No. 20/2021 for the offence punishable under Section 7 of Prevention of Corruption, Act (for short 'Act'), is seeking discharge.

2. The petitioner is Assistant Registrar of Co-operative Society, Shrigonda and was called upon by the complainant to conduct a raid on the private money lender. It is alleged that complainant made accused on 28/09/2020 wherein the accused informed him that the expenses for the raid are required such as vehicle, video grapher, police bandobast etc. The said amount was asked on the ground that the office of the accused is not having fund avoidable to meet these expenses. The complainant therefore made complaint with Anti Corruption Bureau,

Ahmednagar on 29/09/2020 stating that the accused is demanding bribe of Rs.13,000/-. Accordingly, Officer of ACB verified the demand of bribe. Finally since there was no successful trap, on two occasion, charge-sheet came to be filed for offence of demand of bribe under Section 7 of the Act.

3. It is contention of the petitioner that he never demanded any bribe from complainant and that the verification of demand panchnama also clearly indicates so. It is his contention that complainant was clearly told that he does not need the money and alternatively he may incur expenses for raid or that and such amount can be sought from the Government.

4. Learned counsel for the petitioner amongst other submissions argued that having regard to the nature of allegations and the verification of demand panchnama this is not a case of demand of any bribe and the petitioner has in in view of the admitted fact that accused had mentioned about the the complainant being not required to make payment of any money. Present proceeding cannot be allowed to be continued. By referring to Section 7 of the Act it is submitted that the alleged act of accused does not amount to demand of illegal gratification and hence it is not a fit case to frame charge against the accused.

5. Learned APP opposed the said submission by referring to the conversation between complainant and petitioner. It is submitted that to seek expenses for conducting raid is not part of duty of petitioner and he could not have called upon the complainant to pay Rs.13,000/- which was finally settled at Rs.10,000/-. Thus, according to him having regard to the wide scope of Section 7; amounts to an Act of demand of illegal gratification.

6. Petitioner/accused is seeking discharge under Section 227 of Cr.P.C. The law on the point of discharge of an accused is fairly settled to say that a charge can be framed against him even on the basis of strong suspicion. The marshaling and appreciation of evidence is not within domain of the Court at this stage of the criminal proceeding. The broad guideline in this regard would be that if the evidence available on record goes uncontroverted, the same may result in the conviction of the accused and in such situation the accused is not entitled for discharge.

7. In the instant case the material placed on record clearly indicates that the complainant had been to the petitioner/accused for conducting a raid on a private money lender. There is no denial of the fact that the petitioner had instructed him to spend for arrangement of vehicle, video graphing, police bandobast etc. It is the contention of the petitioner that he never demanded any illegal gratification for himself or for any other

person and in fact from time to time it was conveyed to the complainant that he may incur the said expenses directly or even if he does not do so, the required funds can be obtained from the government.

8. Section 7 of the Act has undergone change by virtue of amendment with effect from 26th July, 2018. Prior to the amendment demand or acceptance of gratification whatever other than legal remuneration as motive or reward for doing any official act constituted as an offence. Whereas post amendment to the said section an attempt to obtain from any person any undue advantage with the intention to perform the duty has become an offence. Pertinently the word "gratification" has been substituted by "undue advantage" which is defined in Section 2(d) to state that undue advantage means any gratification whatever other than legal remuneration. The explanation to the said Section shows that the gratification is not limited to pecuniary gratifications or gratifications estimable in money. Most importantly the expression "legal remuneration" is said to be not restricted to remuneration paid to a public servant but includes all remuneration which he is permitted by the Government or the organization which is he serves to receive.

9. In the backdrop the aforesaid provisions if the facts of the present case are assessed for the limited purpose whether to discharge accused

or not, clearly indicate that the complainant had been to the petitioner/accused with a complaint against a private money lender and action was sought to be taken against him. There is no dispute about the fact that the petitioner is competent to take such action including conducting of raid on the money lender and it is part of discharge of his duty. *Prima facie* perusal of the complaint as well as verification panchnama indicates that there was talk between complainant and petitioner about the conducting of raid and for that purpose the petitioner has indicated to the complainant about a sum of Rs.13,000/- being required to meet expenses such as video graphing, vehicles, police bandobast etc. It is the case of the petitioner that it is does not amount to demand of bribe and hence he is entitled for discharge.

10. The dictionary meaning of word 'undue; is to expect more than what is due to one. 'Advantage' also means to take the benefit of the situation. Dictionary meaning of those words coupled with the explanation under Section 2(d) of the Act clearly indicates that the word "undue advantage" is used in its widest magnitude to cover not only the pecuniary gratification which is estimable in terms of money but also an advantage which is not due. Most importantly Section 7 of the Act does not make a reference to the undue advantage being obtained by any person for himself or even for any other public servant. It only speaks that wherever there is attempt to obtain undue advantage for

performing or not performing duty by a public servant.

11. Having regard to the scope and ambit of Section 7 of the Act, *prima facie* an attempt of the public servant i.e. the petitioner herein to seek money for the purpose of conducting a raid, may be as per his case for meeting expenses thereof, *prima facie* makes out a strong case constituting offence punishable under Section 7 of the Act. In considered view of this Court such interpretation is inescapable, as on the face of it demand of such money is not legal remuneration payable to him. Secondly, whether it was permissible for the petitioner to receive such remuneration as contemplated by Section 2(a) of the Act would be matter to be decided during trial. The submission made on behalf of petitioner that at later point of the time the petitioner has called upon the complainant to bear the said expenses on his own or to meet same with government grant is hardly of any consequence. At this stage, it is not open for this Court to weigh and sift evidence. Apparently, on the basis of evidence available on record there is more than strong suspicion of the commission of crime by petitioner. Acceptance of contention of applicant would give license to the public servants to coach demand of illegal gratification in form of meeting of expenses etc. and this would open flood gate of corruption for the unscrupulous/ dishonest public servant. Any such interpretation would have drastic effects and the provisions of Prevention of Corruption Act, would be

rendered redundant. Consequently, no case is made out by petitioner to seek discharge.

12. It is clarified that above observations are made for purpose of deciding petition and trial Court shall not get influenced by the same. Hence petition is dismissed.

(R. M. JOSHI, J.)

ssp