

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.73 OF 2018

Tushar Yuvraj Patil

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Mahendra Sandhyanshiv i/by Vikas B. Shivarkar, for the Appellant.

Mr. V. B. Konde-Deshmukh, APP for the Respondent/State.

Mr. Rahul S. Kate, for the Respondent No.4.

Ms. Maya More (Dy.SP), More (HC) & Tari (HC) – present.

Smt. Anjali Andhale, Dy. SP, Investigating Officer – present.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 6th FEBRUARY, 2023

PC.

1. Since Mr. Rahul Kate, learned counsel is appearing for respondent No.4, appearance of Mr. Nitin Gaware for respondent No.4 stands discharged.

2. This Court on 4th December, 2018 issued a notice for final disposal and made the same returnable on 4th March, 2019 and the APP has waived notice in the matter.

3. The prayer in the petition is as under :-

“(b) This Hon’ble Court be pleased to direct the Respondent No.1 to transfer the present matter being C.R. No.II-77/2015 registered at Mahatma Phule Chowk Police Station, Kalyan to CBI or other investigation agency which this Hon’ble Court deems fit for further investigation.

- (c) This Hon'ble Court be pleased to quash and set aside the impugned order dated 29.06.2017 passed by Ld. Special Judge, Special Court, Kalyan in C.R. No.II-77/2015 registered at Mahatma Phule Chowk Police Station, Kalyan, Thane."

4. The facts necessary for deciding the present petition are as under :-

The petitioner, a complainant in Crime No.II-77/2015 has approached the Anti-Corruption Authority claiming that the respondent No.4, a public servant for the purpose of excavation of minor minerals in addition to the royalty has demanded the bribe of Rs.25,000/-.

5. During trap, co-accused/Janardhan Suryawanshi, a Talathi accepted the bribe amount which was marked with Anthracene powder, delivered the same in the drawer of the official table in the presence of respondent No.4 in his chamber.

6. In the aforesaid background, the respondent/ Investigating Officer charge-sheeted the Talathi, however, exonerated the respondent No.4 thereby submitting a closure report stating that no offence is made out against the respondent No.4. Vide impugned order the Sessions Judge accepted the report under Section 169 of the CrPC as the evidence was claimed to be deficient. As such, this petition.

7. We have heard counsel for the petitioner at length, so also learned APP and respondent No.4, a public servant.

8. The contentions of counsel for the petitioner are, the order impugned dated 29th June, 2017 is non-speaking order. According to him, the Investigating Authorities, so also the Supervising Authorities have failed to bring the fact about the receipt of bribe amount by the respondent No.4, Naib Tahsildar in his chamber, particularly, which was delivered by co-accused/Talathi in the drawer of official table of the said accused to the notice of Court below. He would further urge that the said fact can be substantiated from the careful reading of the transcript which was recorded at the time of trap panchanama.

9. As such, according to him, the order impugned is liable to be quashed and set aside and directions needs to be issued to the Sessions Judge to apply its mind to the aforesaid fact and pass the order afresh as to whether the report of closure against the respondent No.4 can be accepted or is liable to be rejected with further appropriate directions.

10. Learned APP Mr. V. B. Konde-Deshmukh appearing for the respondent/State and Mr. Rahule Kate appearing for the respondent No.4 would submit that the co-accused, a Talathi was having access to the chamber of the respondent No.4, he being a official working in the revenue department. According to them, trap panchanama does not reflect that the respondent No.4 has demanded bribe amount. It is further claimed that the amount of bribe was forcibly delivered by the co-accused/Janardhan

Suryawanshi, a Talathi in the drawer of official table of the respondent No.4. It is claimed that in absence of direct demand by respondent No.4 as could be ascertained from the transcript of the trap panchanama, respondent No.4, it was decided not proceeded under the provisions of Prevention of Corruption Act.

11. We have appreciated the aforesaid submissions.

12. With the assistance of learned APP, we have gone through the transcript of the conversation which was recorded during the conduct of the trap panchanama. Having gone through the same, *prima-facie* we are of the view that the co-accused/Janardhan Suryawanshi, a Talathi has demanded the bribe on behalf of respondent No.4 as could be noticed from the very signal by the respondent No.4 to the said co-accused, the interaction between the petitioner/complainant and respondent No.4 and the fact that the amount was delivered in the official chamber of respondent No.4 in his presence.

13. While exercising powers under Section 169 of the CrPC, the procedure contemplated is, the police upon investigation if satisfies itself that sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate is absent, the police is authorized to forward a report of deficient evidence.

14. In such an eventuality, the report forwarded by the

police is required to be considered by the Magistrate and the Magistrate is not armed with any powers to direct the police to submit a charge-sheet under Section 170 of the CrPC. However, a Magistrate has every authority to accept or not to accept such report and take suitable action according to law. However, he cannot direct the police authorities to submit a charge-sheet in the matter. However, if the Magistrate suspects that an offence has been committed irrespective of provisions of Section 169 of the CrPC, he can take cognizance under Section 190 of the CrPC. In support of the aforesaid observation, reliance can be placed on the judgment of the Apex Court in the matter of ***Abhinandan Jha & Ors. Vs. Dinesh Mishra*** reported in ***AIR 1968 SC 117***. In the facts of the present case, from the events narrated hereinabove, it can be noticed that the royalty for the release of minor minerals was already paid by the complainant and in addition thereto the amount of bribe was sought. The amount of bribe was sought and accepted by the co-accused subsequent to the deposit of the royalty amount. The case of the prosecution rests on the event that the amount of bribe was delivered in the official chamber of respondent No.4 that too by the co-accused by placing the same in the drawer of the table of the said accused. The act of delivering the bribe appears to have occurred in the physical presence of the respondent No.4 and there is no resistance from the respondent No.4 to the same. The transcript as is perused by this Court further amplifies the fact of the respondent No.4 being the party to the acceptance of the bribe may not be

physically. As such, the order impugned passed under Section 169 of the CrPC cannot be said to be in tune with the provisions of Section 169 of the CrPC. As such, the order impugned passed on 29th June, 2017 is accordingly quashed and set aside.

15. In this background, it was open for this Court to either to direct the Magistrate to consider the issue afresh, particularly, in the light of law laid down by the Apex Court in the matter of *Abhinandan Jha (cited supra)*, whereby it has been held that it is open for the Magistrate to take cognizance of offence under Section 190 of the CrPC. However, in response to the above, learned APP on instructions from the Investigating Officer submits that the entire investigation papers shall be re-examined in the backdrop of the aforesaid observations and the decision as to charge-sheeting the respondent No.4 shall be taken afresh.

16. As the aforesaid statement is made based on the earlier observations of this Court, same is accepted.

17. It is directed that the final decision taken by the Investigating Officer as regards the prosecution of respondent No.4 shall be communicated to the petitioner within a period of 15 days from the date of such decision.

18. The petition as such stands allowed in above terms.

[R. N. LADDHA, J.]

[NTIN W. SAMBRE, J.]