

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 492 OF 2023**

Mukesh Nathuji Gajbhiye

...Petitioner

Versus

State of Maharashtra

...Respondent

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Mr. Pramod Arjunwadkar a/w Mr. B. H. Goswami, Advocate for the Petitioner.

Ms. P. N. Dabholkar, APP for the Respondent – State.

P. I. Arundhati Y. ACB, Navi Mumbai is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th JULY 2023

PC :

1. The Petitioner is aggrieved by order dated 6th October 2022 passed by learned Additional Sessions Judg, Mangaon, District Raigad in Special A.C.B. Case No.02 of 2019 rejecting the application for discharge (Exh.8) preferred by petitioner.

2. The prosecution case is as follows:-

(i) The complainant is electrical contractor. He undertakes contract of installing electric meters, transformers and electric pole in newly constructed buildings. The accused was Deputy Engineer in MSEDCL Pali, Sub Division.

(ii) The complainant was assigned the contract of electric meters,

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transformer and electric pole in two newly constructed buildings of La Vinayak Constructions. The complainant was in need of 41 electric meters. He had presented file of documents for sanction of meters in the office of sub Division MSEDCL in December 2017.

(iii) The accused demanded Rs. 2000/- per meter and total amount of Rs.80,000/- for sanction of meters. The complainant gave an amount of Rs. 30,000/- by way of first installment of payment. The complainant was provided 21 electric meters on 31st January 2018. However, 20 electric meters were not given to him. For such delivery, the accused was demanding the balance amount of Rs.50,000/- from complainant.

(iv) The complainant was also assigned contract of installing transformer and electric pole to the bungalow scheme of Gajanan Mante and Sadanant Patil. The accused demanded two lakhs for sanctioning the work.

(v) The complainant approached ACB and submitted handwritten complaint against the accused on 31st October 2018.

(vi) The ACB decided to verify the demand by accused on 2nd February 2018. The complainant and panch witnesses were deputed for verification of demand to the office of accused. DVR was installed on person of complainant. The complainant approached

accused. There was conversation between them. It is recorded in DVR. The conversation reveal that accused demanded Rs. One lakh.

(vii) The complainant than informed that the accused is going out for work and it will not be possible to meet him. It was decided to initiate action of trap, as and when the accused calls the complainant to meet him. Thereafter, the accused was transferred to Roha, district Raigad. FIR was registered on 18th July 2018. On completing investigation, charge-sheet was filed for offence under Section 7 of Prevention of Corruption Act.

3. The applicant preferred application for discharge before the trial Court. The said application was rejected vide order dated 6th October 2022.

4. Learned Advocate Mr.Arjunwadkar, appearing for petitioner submitted that, the prosecution has failed to establish prima facie case for framing charge. Conversation relied upon by prosecution discloses that the complainant was trying to offer bribe. The accused did not demand bribe. Further action was postponed and it was subject to call by the accused to the complainant. The accused did not make any call to the complainant from 2nd February 2018 till 18th July 2018. It is not the case of prosecution that, the complainant met the petitioner or the petitioner met the complainant from 2nd

February 2018 to 18th July 2018 and demanded bribe. The recording relied upon by the prosecution is doubtful. There is no conversation with regard to the demand of bribe by the accused. There was no attempt to trap the accused. The statement of Anil P. Rawat, who is the owner of M/s. La Vinayaka Construction discloses that, the complainant did not inform him that the accused had demanded money. The consumers, who require heavy power load for residential purpose were required to apply for electricity supply to Sub-Division Office, Pali. On receipt of such application, the Deputy Executive Engineer, Sub-Division Office make endorsement and allot the application to the concerned Assistant Engineer in whose jurisdiction, the consumer needs heavy load for residential purpose. The Assistant Engineer is required to visit the location and prepare plan and estimate for supply of heavy load for residential purpose as per requirement of consumers and prepare map and list of material required. The Assistant Engineer thereafter has to put up the application and his estimate, plans etc. before Deputy Executive Engineer at Sub-Division Office, Pali. The Deputy Executive Engineer at Sub-Division Office, Pali has no role to play except to maintain hierarchy and forward the report of Assistant Engineer to Superintendent Engineer of Circle Office at Pen or Executive Engineer at Divisional Office at Roha. If the proposal is accepted by

superintendent Engineer of circle office at Pen, or Executive Engineer at Divisional Office, Roha, the said authority sanctions the said load and issues sanction letter to Deputy Executive Engineer, Sub-Division Office, Pali. Electric meters are not in custody of Deputy Executive Engineer. Panch witnesses did not hear alleged conversation. The learned Judge has erroneously rejected the application for discharge.

5. Learned APP submitted that, at the stage of framing charge, what is required to be seen is whether prima facie case is made out against the accused. There is sufficient evidence on record to proceed against the accused. The version of the complainant cannot be discarded at this stage. The accused had demanded bribe for performing the work of complainant. The accused is charged for offence under Section 7 of the Prevention of Corruption Act. The complaint mentioned that accused had demanded Rs.2,00,000/- from complainant. The demand verification panchnama shows that the petitioner had demanded Rs.1,00,000/- from complainant. The conversation recorded during verification shows that petitioner had demanded bribe amount from complainant. Hence, there was no infirmity in the impugned order. The petition may be dismissed.

6. Perused the charge-sheet. The complainant is the electrical contractor. He approached the A.C.B. on 31st January 2018. He submitted handwritten complaint. In the said complaint, it was

alleged that two new buildings were constructed by La Vinayak Constructions at Pali, Devulwadi. There is need of electric meters in the said buildings. Such meters are not received. The complainant has submitted required documents in the office of MSEDCL in December 2017. The accused demanded Rs.2000/- per electric meter, totally amounting to Rs.80,000/-. The complainant parted the amount of Rs.30,000/-. Thereafter, on 31st January 2018, 21 electric meters were delivered to him and 20 electric meters are to be delivered for which the accused is demanding Rs.50,000/-. Thus, according to complainant, he gave an amount of Rs.30,000/- to the accused. The said complaint is silent about date of demand and payment of Rs.30,000/- to the accused. Version of complainant reveal that Rs.80,000/- were demanded and Rs.30,000/- were paid by him which means he had agreed to satisfy the demand. It is further alleged that construction of bungalow scheme by Gajanan Mante and Sadanand Patil is in progress at Sudhagad District Raigad. He is assigned work of transformer and electric pole and he has submitted file to MSEDCL Office, Pali about 15 days ago. He approached the accused in that regard. The accused demanded Rs.2,00,000/- and told the complainant that the sanction for electric pole/transformer after he makes payment and on visiting site. The date of submitting file, the date of demand is not mentioned in the

complaint. However, complaint was submitted on 31st January 2018. Before making payment of Rs.30,000/- the complainant did not approach ACB. On 2nd February 2018, the ACB had purportedly decided to verify the demand. The complainant and panch witness were deputed for implementing the demand verification. D.V.R. was installed on the person of complainant. The panch witnesses were instructed to hear the conversation between complainant and accused. According to panchnama of demand verification, the panch witness Ambekar did not enter the cabin of accused with complainant to avoid suspicion. The complainant alone went to cabin of accused. Panchnama discloses the conversation ensued between the complainant and the accused. The entire conversation does not disclose that the accused had demanded any bribe amount from the complainant for performing work. According to prosecution the accused demanded one lakh. From the script it appears that there is vague conversation of complainant referring to figure 'one'. Conversation does not refer to demand of bribe for grant of sanction by accused. The inference of demand is drawn on the basis of alleged conversation of complainant. The conversation is contrary to complaint dated 31st January 2018. The conversation of complainant is not corroborated by any evidence. The tenor of conversation indicate that the complainant was interested in offering

bribe to the accused. The verification was not followed by trap. It is alleged that accused was not available. It was decided to proceed with further action, as and when complainant is called by accused. There was no further communication between complainant and accused. After period of five months from date of demand verification, FIR was registered on 18th July 2018. There was no demand and acceptance of bribe. During the said period accused did not call the complainant. Statement of complainant was recorded on 14th May 2018. In the statement it is stated that accused had demanded Rs. One lakh as bribe. Since the accused went out, there was no meeting with him. The bribe amount was to be given to accused on the next day after the complainant receives call from accused. He did not receive call from accused. Statements of Gajanan Mante and Sadanand Patil were recorded on 12th September 2018. They have stated that complainant had approached them and informed that he is accepting contract of installing electric transformer and electric pole. Hence, he was assigned the said work. There was no exchange of correspondence. They were not aware about any complaint lodged by complainant with ACB. Statement of Anil Ravat of La Vinayak Constructions was recorded on 22nd September 2018. He stated that complainant had approached him and informed that he is accepting contract of installation of electric

transformer, electric pole. He was assigned the said work. There was no exchange of any correspondence with complainant. He was not aware about any complaint lodged by complainant against accused with ACB. Statement of Santosh Palwe was recorded on 14th December 2018. He was working as Assistant Engineer, MSEDCL, Pali. He stated that on receipt of application for new electricity connection by Sub-Division Pali, survey report or estimate is called from Branch Engineer and thereafter application is forwarded for sanction to Divisional Office. After approval from the said office, permission for new electricity connection is granted. Sanction to La Vinayak construction was granted on 15th December 2014. 16 Electric meters were provided to them on 31st January 2018 and balance 25 meters were provided on 20th February 2018. Application from bungalow scheme of Gajanan Mante and Sadanand Patil for electric transformer and electric pole was received by Sub-Divisional Office. Documents received by Sub-Divisional Office from Assistant Engineer on 12th February 2018. Application was sent for approval on 16th February 2018 to Divisional Office at Roha. Approval received from said office on 7th march 2018. Report submitted to Electric Inspector on 16th April 2018. The version of this witness is contrary to complainant's complaint. This statement falsifies the claim of complainant. Statement of Shyam Ghaytadak was recorded on 24th

December 2018. He was working as Executive Engineer, MSEDCL at Roha. He stated that on receipt of sanction proposal from accused on 20th February 2018, he had forwarded it to MSEDCL office at Pen. On 12th February 2014, the accused had forwarded proposal for sanction in respect to construction of La Vinayak for the purpose of electric meters, transformer and electric pole. Sanction was granted on 15th December 2014. The statement of this witness also runs counter to allegations in complaint.

7. If the prosecution fails to make out prima facie case to frame charge, the court is empowered to discharge the accused. Considering these aspects, it is evident that no case is made out to proceed against accused. He is required to be discharged.

ORDER

- (i) Criminal Writ Petition No. 492 of 2023 is allowed;
- (ii) Order dated 6th October 2022 passed by learned Additional Sessions Judge-2 and Additional Sessions Judge, Mangaon, District Raigad rejecting application below Exh.8 in Special ACB Case No. 02 of 2019 is set aside.
- (iii) The petitioner is discharged in Special ACB Case No. 02 of 2019 pending before the Sessions Court, Mangaon, District Raigad.
- (iv) Writ Petition stands disposed off.

(PRAKASH D. NAIK, J.)