

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 69 OF 2023

Kishore J Wagh .. Applicant
Versus
The State of Maharashtra and ors .. Respondents
...

Mr.Girish Kulkarni i/b Darshan Juikar, Aditya Mitne, Omkar Ghag for the petitioner.
Mr.A.D. Kamkhedkar, APP for the State.
PI Shri Kishor Shewate, ACB, Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2023

P.C:-

1 The Revision Application filed by the applicant, challenging the order passed by the Special Judge, Greater Mumbai, in ACB Special Case No.78/2018, where the discharge is refused to the applicant, deserve to be allowed, in light of the affidavit filed by the Additional Deputy Commissioner of Police, ACB, Mumbai on 25/4/2023.

 In the wake of the specific statement in the affidavit, I need not delve deep into the application, but it would be sufficient if I touch the background facts and straight way come to the response filed to the application by the ACB, Mumbai.

2 On a complaint filed by one Ravindra K. Nevge, ACB Case No.43/2016 came to be registered with Anti Corruption Bureau, invoking Sections 7, 12, 13(1)(d) read 13(2) of Prevention of Corruption Act, 1988 against accused no.1 Gajanam Bhagat, accused no.2 Kishore Wagh, (the applicant) and one Sandesh B. Kamble, being arraigned as accused no.3.

 On completion of investigation, the charge-sheet was filed which unfolded the prosecution case as under:-

(a) The complainant Ravindra Navge is the brother of one Sachidanand Nevge, who pursuant to a performance of a spinal cord surgery on 4/6/1997 in Mahatma Gandhi Smarak Hospital, Parel, Mumbai, expired on 12/6/1997. It was alleged that the death has occurred on account of the negligence of the Doctors and hence, the complainant approached the State Consumer Redressal Commission, Maharashtra State, pleading medical negligence. The Commission arrived at a conclusion that the death has occurred on account of the negligence of the doctors and by it's order/judgment dated 19/3/2013, directed payment of compensation.

(b) Being aggrieved by the said order, the Hospital Administration approached the National Consumer Dispute Redressal Commission, which directed the parties to explore the possibility of mutual settlement.

(c) In furtherance of the said directions, the complainant presented four distinct proposals to the Hospital Administration, first to the tune of Rs.17 lakhs, second to the tune of Rs.13 lakhs and an employment offer for the son of the deceased, the third proposal for Rs.12 lakhs and the fourth, being payment for Rs.11 lakhs by way of compensation.

3 The prosecution allege that the applicant, working as Medical Record Librarian called the complainant in his office and asked him to submit a proposal of Rs.15 lakhs and employment for the son of the deceased. It is alleged that for getting the proposal approved, a bribe amount of Rs.Four lakhs was made demanded on behalf of the Medical Superintendent of the Hospital, Shri Bhagat.

In furtherance of the suggestion by the applicant, a proposal was forwarded by the complainant before the Hospital Administration and since the complainant was not ready to pay the bribe amount, he lodged a written complaint to the ACB on 17/6/2016.

4 As per the charge-sheet, the alleged demand was sought to be verified on 18/6/2016 by deputing two panchas, but no contact could be established with the applicant and therefore, the verification could not take place. On 23/6/2016, another attempt was made for verification of the demand, where some discussion took place between the complainant and the applicant

about a draft, but no physical meeting took place and therefore, the verification could not be completed. Thereafter, on 30/3/2016, no contact was established with the applicant and on 1/7/2016, when the complainant contacted the accused through the ACB office, he was asked to meet him on 2/7/2016 between 6.00 pm to 6.30 p.m in the hospital at Parel, Mumbai. The conversation between the applicant and the complainant was recorded through a voice recorder into a SD card.

The prosecution allege that as directed by the applicant, the demand was verified and thereafter, when the complainant approached the canteen of the hospital, he was told that accused no.1 Bhagat is not in the hospital, but he is in Naigaon and therefore, they will have to visit Naigaon. Accordingly, the complainant and the panch accompanied by the applicant, decided to proceed to Naigaon, but the panch could not accompany them and at the direction of accused no.1, the complainant and the accused were asked to reach Samarth Hotel, Naigaon, Mumbai. On reaching there, discussion took place about the work and the complainant was assured that his work is done and he should give the proposal for mutual settlement, and accused no.1 Bhagat directed that the amount of Rs.Four lakhs should be paid to the applicant. Thereafter, they returned to Mumbai and the complainant was informed that one Pralhad Shetye would establish contact with him and the amount of bribe should be handed over to him.

5 Thereafter, the trap was laid and the amount came to be accepted by Santosh Kamble, who disclosed that he was send by Gajanan Bhagat and when he was telephonically contacted, he admitted that he had send Santosh Kamble for accepting the bribe amount for acceptance of proposal for mutual settlement.

6 Gajanan Bhagat, the Medical Superintendent and Kishore Wagh, the Medical Record Librarian, the public servants, were charged for demanding a bribe amount of Rs.Four lakh from the complainant, for accepting the proposal by the hospital administration of payment of Rs.15 lakhs as compensation.

 They are charged of accepting the illegal gratification through a private person Santosh Kamble.

7 The learned Senior Advocate Girish Kulkarni would vehemently submit that there was no verification of the demand and going by the version of the prosecution, when the transcript is perused, no demand is established.

 Mr.Kulkarni has taken me through the transcript of the conversation placed on record. The conversation between the complainant and the applicant do not conclusively establish any demand, and when it is carefully read and at certain occasions, the applicant is heard to have been speaking about the settlement for the benefit of the complainant and on the contrary, it is seen that the complainant is making reference to the amount

of Rs.Four lakhs. The transcript reveal that the accused is explaining him the procedure for drawing the settlement.

The learned counsel for respondent no.2 was unable to point out any specific part of the conversation, which would refer to the demand of Rs.Four lakh for the purpose of effecting the settlement of Rs.15 lakhs by way of compensation.

8 In response to the Revision Application, Mr.Hemant Madhusudan Sawant, Addl. Dy. Commissioner of Police, ACB, Mumbai, has filed an affidavit, and after narrating the case of the prosecution, he specifically state that to confirm the demand, verification trap was laid on four occasions, and he give the description of the same as under :-

- (1) On 18th June 2016, an attempt failed as the petitioner was not available in the office.
- (2) On 23rd June, 2016 again trap was laid. The transcript of conversations is at Page Nos.70, 71. There was a negative demand from the petitioner. The petitioner said not to make any payment.
- (3) On 01 July 2016, the conversation of Orig. complainant and the petitioner on mobile phone was recorded. There was no relevant conversation regarding demand.
- (4) On 02nd July, 2016 again attempt was made to verify the demand which was recorded and the transcript of the conversation is at Page Nos. 93, 94, 95, 96, 97, 98. There was negative demand from the petitioner. On the basis of the transcript at page no.100, 140 and 141 the FIR came to be recorded”

9 As regards the transcript recorded on page 140, the affidavit contain the following statement :-

“As per transcript recorded on page no.140, the petitioner informed Orig. complainant to meet one Pralhad (a private person). Further the statement of Shri Pralhad Shetye was recorded on 11/07/2016, in which he has stated that the petitioner had instructed him to collect agreement from the complainant. Shri Pralhad waited till 1.15 p.m to collect the agreement but the complainant didn't turn up. Hence, the trap failed. The complainant thereafter contacted accused no.1 Shri Bhagat. Accused no.1 i.e. Dr. Gajanan Bhagat informed the complainant to hand over the bribe amount to a private person Shri Sandesh Kamble (The conversation is recorded and the transcript at Page Nos.178, 183, 184) and subsequently the private person Shri Sandesh Kamble was caught, accepting bribe amount of Rs.4 lakhs. Hence, on the day of acceptance there was no demand by the petitioner”.

10 With a specific statement coming from the ACP in the affidavit, to the effect that on the day of acceptance, there was no demand by the petitioner, I do not think that the prosecution against the applicant should continue.

The applicant face accusation u/s.7 of the P.C Act, and since no demand is established, there can be no conviction u/s.7.

The charge of abetment also do not stand against him if the demand itself is not proved. As far as the misconduct contemplated u/s.13 r/w Section 13(1)(2) of the Prevention of

Corruption Act is concerned, in the wake of the specific statement made in the affidavit of the ACP, no fruitful purpose will be served by trying the applicant for the charges levelled against him and therefore, he deserve a discharge.

11 As a result of the above, Revision Application, is allowed by setting aside the impugned order dated 12/1/2023 passed by the Special Sessions Judge for Greater Mumbai in ACB Special Case No.78/2018.

(SMT.BHARATI DANGRE,J)