IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 522 OF 2021

Manish Khandelwal ... Petitioner
Versus
Maharashtra State Police Complaint Authority & Ors. ... Respondents

Mr. Bhavesh Parmar a/w Mr. Rahul Gaikwad, Adv. Aman, Mr. Nikita Abhyankar, Adv. Garima Joshi, Adv. Reshma Naik, Mr. Vivek Akshali, Adv. Vivek Akshali, Adv. Rajesh Sahani i/b. Gravitas Legal for the Petitioners.
Smt. G. P. Mulekar, APP for the respondent - state.
Mr. Faisal Sayyed i/b. M. K. Ambalal & Co for respondent nos. 10 & 11.
Mr. Mayur Khandeparkar a/w. Mr. Iesham Sinha, Adv. Aayesh Gandhi i/b. Wadia Ghandy & Co. for Respondent Nos.8 and 9.
Mr. Pradip D. Gharat for the respondent no. 3.

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

DATED : 1st FEBRUARY, 2023

P.C.:

1. The petitioner came to be charge-sheeted as accused no. 7 for an offence punishable u/s. 120B r/w. section 406, 409, 420 of IPC in Crime No. 68 of 2010 in the Court of Additional Chief Metropolitan Magistrate 47th Court, Esplanade, Greater Mumbai.

2. In the investigation of the said offence the respondent no. 3- the then Additional Commissioner of Police, EOW and respondent no. 4-Deputy Commissioner of Police, EOW were supervising

officers whereas the respondent nos. 5 to 7 were the investigating officers. The respondent no. 3 during such supervision of investigation has issued a communication dated 18/07/2011 to the respondent no. 8 intimating that in the investigation of the aforesaid offence there is a need of Forensic Accountant for analyzing the electronically maintained records pertaining to transfer of funds and various securities through banking institutions and accounts maintained therein. As such, respondent no. 3 has inquired with respondent no-8 as to whether they can provide assistance in the aforesaid matter.

3. In response to the same respondent no. 8 has accepted the request of the rendering assistance to the investigating agency vide its communication dated 22/07/2011. However, the cost of such assistance was informed to be paid by the complainant i.e. ICICI Bank.

4. Forming aforesaid communication, the contentions of the petitioner in the petition are, hiring of expertise knowledge of respondent no. 8 by respondent no. 3 in the investigation of the offence is not permissible particularly when the cost of such forensic assistance which is in the aid of the investigation and used for charge-sheeting the petitioner is borned by the

complainant.

5. According to learned counsel for the petitioner, the aforesaid issue as to the legal embargo on the rights of the investigating agency to hire the services of 3rd party that too at the cost of the complainant being not permissible in law is no more res-integra and has sought support from the judgment of Apex Court in the matter of ***Navinchandra N. Majithia vs State of Meghalaya & Ors.*** reported ***in AIR 2000 SC 3275.***

6. As such, the petitioner has come out with the following prayers:

> "(a) This Hon'ble Court be pleased to issue a writ of mandamus or any other similar writ of similar nature directing the Respondents to initiate enquiry on the basis of the Complaint dated August 14, 2020 filed before the Respondent No. 1 and/or the Complaint dated June 2, 2020;
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> (b) This Hon'ble Court be pleased to order an appropriate writ directing the Respondents to initiate appropriate legal action against Rajvardhan Sinha, then Additional Commissioner of Police, Bharti Kurade, then Deputy Commissioner of Police, B. P. Shelke and B. B. Pingat then Police Inspector, Shivaji Shelar, then Sr. Police Inspector, under the Maharashtra Police Act, 1951;
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> (c) This Hon'ble Court be pleased to direct the Respondents to seek sanction to prosecute Rajvardhan Sinha, then Additional Commissioner of Police, Bharti Kurade, then Deputy Commissioner of Police, B. P. Shelke and B. B. Pingat, then Police Inspector, Shivaji Shelar, then Sr. Police Inspector.

(d) This Hon'ble Court be pleased to direct that an FIR be registered against Rajvardhan Sinha, then Additional Commissioner of Police, Bharati Kurade, then Deputy Commissioner of Police, B. P. Shelke and B. B. Pingat, then Police Inspector, Shivaji Shelar, then Sr. Police Inspector, Dr. Sanjay Chaugule, Sr. General Manager (FCPG), ICICI Bank Ltd. Mumbai, Directors and Officers of Deloitte Touche Tohmastsu Pvt and other Directors and Officers of ICICI Bank Ltd. under the provisions of the Indian Penal Code, 1860 and another FIR be registered before the Anti-Corruption Bureau under the provisions of Prevention of Corruption Act, 1988;

(e) Pending the final disposal of the present Petition, this Hon'ble Court be pleased to suspend Rajvardhan Sinha, then Additional Commissioner of Police, Bharti Kurade, then Deputy Commissioner of Police, B. P. Shelke and B. B. Pingat, then Police Inspector, Shivaji Shelar, then Sr. Police Inspector from their existing post with immediate effect pending a detailed enquiry against them."

7. According to learned counsel for the petitioner, it is the ICICI bank who has paid the respondent no. 8 for forensic audit/ analysis charges in the investigation of the offence. In any case same is not paid by the investigating agency as is apparent from the information received under the Right to Information Act.

8. As such, drawing support from the provisions of section 7 of the Prevention of Corruption Act, particularly sub-sections (a) and (b), he would urge that the respondent nos. 3 to 7 are required to be proceeded under the provisions of Prevention of Corruption Act. In alternate, he would urge that appropriate legal action be issued

against the said officials i.e. investigating officers for committing aforesaid illegalities/irregularities for carrying out illegal investigation at the behest and cost of the complainant.

9. While countering the aforesaid submissions, Smt. Mulekar learned APP & learned counsel for respondent no. 3 would urge that aforesaid plea as to non-permissibly of procedure adopted in the investigation can be looked into by the Trial Court where the petitioner has already charge-sheeted. According to them, unless the Trial Court records findings to the illegalities committed by the respondent nos. 3 to 7-officials, the Court should not in extra-ordinary jurisdiction records findings as to the directions of prosecution under the provisions of Prevention of Corruption Act or that the commission of illegalities in the matter.

10. We have appreciated the aforesaid submissions.

11. The provision of sub-sections (a) and (b) of section 7 of the Prevention of Corruption Act reads thus:

> "**7. Offence relating to public servant being bribed -**
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> Any public servant who,-
> (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

> (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or....."

12. Sub-section (a) of section 7 provides for an offence by a public servant in case if he obtains or accepts or attempts to obtain from any person, an undue advantage, with an intention to perform or cause to performance of public duty improperly or dishonestly or forbear himself. Sub-section (b) of section 7 further provides that such an attempt on the part of the public servant in obtaining reward for improper and dishonest performance of public duty is an offence.

13. The perusal of the pleadings in the petition no way substantiates the aforesaid ingredients. The petitioner has not come out with the case before this Court stating that respondent nos. 3 to 7, public officials have taken undue advantage with an intention to perform the public duty improperly from the complainant.

14. Apart from above, it is not the case of the petitioner that by taking assistance of respondent no. 8 in the matter of investigation of the complaint against the petitioner any bribe was

accepted or there was any attempt of forbearance for undue advantage or reward.

15. As such, even if respondent no. 3 has communicated with respondent no. 8 for the purpose of extending assistance for carrying out forensic audit and respondent no. 8 has extended assistance may be at the cost of complainant, it cannot be said that such act on the part of the respondent nos. 3 to 7 can be said to have committed an offence under the provisions of Prevention of Corruption Act.

16. An admissibility of the evidence collected by respondent no. 8 which formed the basis for prosecution of the petitioner will be an independent issue and same can be looked into by the Trial Court at the time of appreciation of evidence particularly defence if so raised by the petitioner.

17. In the aforesaid background, no case for causing interference or granting release at the behest of the petitioner is made out. The petition as such fails and stands dismissed.

(R. N. LADDHA, J) **(NITIN W. SAMBRE, J.)**