

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4462 OF 2022**

Ankur Dushyant Patel

.. Petitioner

Versus

Central Bureau of Investigation and Ors

.. Respondents

...

Mr.Niranjan Mundargi i/b Mr. Rahul Arote a/w Ms. Keral Mehta, for the Petitioner.

Mr.Kuldeep Patil for Respondent no.1, CBI.

Mr. Y.M.Nakhwa, APP for the State.

Dr. A. Chandrachud i/b Mr. Aayush Kedia, for Respondent no.4.

Mr. Shantanu Thorat h/f Mr. Hiten Venegavkar for Respondent no.2.

CORAM: BHARATI DANGRE, J.

DATED : 12th OCTOBER, 2023

P.C:-

1 The present writ petition is filed, calling in question the correctness and legality of the order dated 13/06/2022 passed by the Sessions Court, Daman and this Court is called upon to set aside the order and with a direction to the Hon'ble Sessions Court to take cognizance against the accused i.e. respondent no.4 and issue summons against him.

 The aforesaid relief is sought in the backdrop that a complaint came to be filed with the CBI, ACB against the respondent no.4 and one Mr. Dinkar Patil, which resulted into a C.R. being registered on 24/09/2019 for the offences punishable under Section 7(a) of the Prevention of Corruption Act, 1988 a/w

Section 120 B of IPC, 1860.

On completion of the investigation, the CBI, ACB filed a closure report on 24/12/2019, reporting that no offence is made out against the respondent no.4 and he came to be exonerated.

This is the cause for the present petition.

2 I have heard Mr. Niranjan Mundargi along with Mr. Arun Arote for the petitioner. Dr. Chandrachud represent the respondent no.4, whereas Mr. Kuldeep Patil has marked his appearance for respondent no.1 CBI and Mr. Hiten Venegavkar represent the Union Territory of Diu and Daman.

3 The complaint lodged by the Superintendent of Police CBI, ACB reads thus:

“A written complaint dated 20.09.2019 of Shri Ankur Patel addressed to SP, CBI, ACB, Mumbai has been received in this office. It is alleged in the complaint that Shri Dhanaji Dubariya, Sub-Inspector of Police, Kadaiya Police Station, Daman has demanded Rs. 50,000/- from him for doing Police Verification with regard to his passport application. The said complaint was marked to Shri Sushilkumar Shinde, PI, CBI, ACB, Mumbai for verification.

Verification revealed that Shri Dinkar Patil, Sub-Inspector of Police in conspiracy with Shri Dhanaji Dubariya, Sub-Inspector of Police both posted at Coastal Police Station, Kadaiya, Daman demand undue advantage of Rs.1,00,000/- from Shri Dushyant Patel, father of the complainant Shri Ankur Patel for expediting Police Verification Report of Shri Ankur Patel and also for showing favour in execution of warrants issued against Shri Dushyant Patel, which are pending with them for execution.

The above acts on the part of Shri Dhanaji Dubariya and Shri Dinkar Patil both sub-Inspectors of Daman Police discloses the offences punishable under Section 120 B of IPC r/w Section 7(a) of Prevention of Corruption (Amendment) Act, 2018. Hence, a regular case is registered and entrusted to Shri Santosh Tore, PI, CBI, ACB, Mumbai for investigation.

Original complaint dated 20/09/2019, Verification Panchnama-I dated 21/09/2019, Panchnama-II dated 22/09/2019, Panchnama-III dated 23/09/2019 and Verification Report dated 24/09/2019 are enclosed.”

In furtherance of the said complaint, a panchnama is drawn on 21/09/2019 to ascertain the demand of bribe of Rs. 50,000/- by accused no.4, Dhanaji Dubariya, sub-Inspector of Police, Coastal Police Station for issuance of Police Verification Report of his passport.

4 It is the version of the complainant that he along with his father are in the business of construction in Gujarat and he had applied for a passport, to the passport office, Daman and when he checked the status of his application on its website, he realized that it was pending for police verification and hence he visited police headquarters Daman. He gained knowledge that his verification is pending at Coastal Police Station, Kadaiya, Daman and hence on his visit to the police station in the last week of August, 2019, he met Dhanaji Dubariya Sub-Inspector of Police, who demanded bribe of Rs. 50,000/- for Police Verification Report and also told him that his father should contact him.

The complaint was recorded as per the complainant in Gujarati language and it was decided that in order to verify the allegations in the complaint, the complainant shall visit the coastal Police Station and discuss the issue with Dhanaji Dubariya and PW-1 Jignesh Parekh would accompany him to the police station. It was also decided that the conversation, which would take place between the complainant and the accused Mr. Dubariya, shall be recorded in a fresh Micro SD card with the help of Digital Voice Recorder (DVR).

Accordingly, the raiding party proceeded towards the Coastal Police Station and as per the prosecution, that the complainant expressed to the constable on duty that he wanted to meet Dhanaji Dubariya. Upon which the constable went inside and after a moment Mr. Dinkar Patil, Sub-Inspector of Police came out of the cabin. As per prosecution, Dinkar Patil asked him about his father Dushyant Patel and informed him that some Court warrants are issued against him and he asked him to arrange a meeting for settling the issues regarding the warrants and his passport verification.

When the complainant insisted for meeting with Dhanaji Dubariya, he was permitted in and he inquired about Police Verification of his passport and he further instructed to talk to his father Mr. Dushyant Patel and sort out the issue. It is alleged that Dhanaji also informed that there are many warrants issued against his father and thereafter on his instructions, the complainant provided mobile number of his father to Dhanaji

Dubariya and informed that he would call his father later on.

This verification came to be recorded in the DVR which was carried by PW-1 and the conversation was played which was recorded in Gujarati language, which came to be translated and since it was informed by the PI that the complaint is not yet verified it was decided to wait for call from Dhanaji Dubariya.

As per the panchnama, no call was received from him and therefore, it was decided that Dushyant Patel will make a call from his mobile to Dhanaji Dubariya and even this conversation will be recorded on the Micro SD card with the help of DVR. Accordingly, a call was made by Dushyant Patel to Dhanaji and it was recorded.

5 It is this conversation, which was recorded in the Micro SD card which is relevant, to ascertain the involvement and as to whether there is a demand made by the present petitioner, the accused.

The prosecution also rely upon a call made by Dinkar Patil on the mobile number of the complainant and once again the conversation was recorded, thereafter as a phone call received from the mobile of Dinkar Patil, when it was decided to meet near Kunjari Mata Mandir and a conversation is recorded about the police verification for his son's passport and at that time Dinkar Patil, the Sub-Inspector informed that Sahab (Dhanaji Dubariya) PSI had demanded Rs.1,00,000/- and instructed to call him after the arrangement of money.

The recorded conversation to the above effect is the genesis of the trap that was laid but it is necessary to find out whether the verification of demand in this transcript of conversation attribute a demand to the present applicant.

6 Dr. Chandrachud has placed reliance upon the latest decision of the Apex Court in case of *K. Shanthamma Vs. State of Telangana (2022) 4 SCC 574*, where the position as regards Section 7 of the Prevention of Corruption Act, 1988 has been reiterated by stating that an offence under Section 7, relating to public servants accepting bribe require proof of (a) demand of illegal gratification and (b) acceptance thereof, and both are *sine qua non* for establishing an offence under Section 7. The position of law on the said aspect is crystallized through various authoritative pronouncements, as mere recovery by itself cannot prove the charge of the prosecution against the accused.

As far as the offence under Section 7 is concerned, the demand of illegal gratification is a *sine qua non* to constitute the offence and unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe, the offence under Section 7 cannot be said to be made out. Mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 7. Proof of acceptance of illegal gratification can follow only if there is proof of demand.

Therefore, it is very necessary to ascertain whether the prosecution had enough material with it to establish the demand.

7 Dr. Chandrachud had placed on record the typed copy of transcription cum voice identification panchnama in form of annexure-A, which record the conversation between Dinkar Patil and the complainant as well as the transcription cum voice identification panchanama, recording the conversation between Dhanaji Dubariya and Dushyant Patel.

The whole transcript of the conversation in no manner has any reference to any demand by the present applicant. From none of the conversation, the demand of Rs.50,000/- by the applicant from the complainant or his father is made out.

Even if one turn to the complaint, the complaint dated 20/09/2019, the complainant state that he do not remember the date but refer to last week of August, when he went to Kadaiya Police Station and met Dhanaji PSI and on being informed that he had come for passport verification, a demand of Rs.50,000/- was raised and that he shall talk to his father before the task is done. Mr. Mundargi was unable to demonstrate any conversation leading to the demand emanating from the applicant and the panchnama of the transcript nowhere has referred to the demand of Rs. 50,000/- as the complainant had reported to the ACB.

8 This is the reason why the Sessions Judge, Daman while dealing with the protest petition filed by the complainant has specifically recorded as under:

“4] I have gone through the record. There is nothing to disclose that PSI Dhanaji Dubariya directly demanded money from the

complainant. It was another PSI Dinkar Patil who had demanded money saying that Dhanaji Dubariya was demanding it. Thus in my opinion the circumstances are not so grave to direct the CBI to move for sanction to prosecute said Dhanaji Dubariya. Hence the order.

The protest petition is dismissed.”

9 In absence of sufficiency of material to proceed with the charge-sheet & to frame charge against Dhanaji Dubariya i.e. the applicant and though the Court had taken cognizance on the charge-sheet filed against Dinkar Patil, an inference was drawn that there is no evidence to disclose that PSI Dhanaji Dubariya demanded the money from the complainant and he came to be discharged and in my view it is the right view.

Mr. Mundargi has not been in a position to invite my attention to any material, contrary to the finding recorded by the concerned Court while it refused to take cognizance against the present applicant and when it rejected the protest petition filed by the complainant.

Hence, upholding the orders assailed in the present petition, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)