

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 288 OF 2022

The State Of Maharashtra
Versus
Sudhir Bhagwan Patil

...Applicant

...Respondent

....

Mrs. Anamika Malhotra Advocate for Applicant-State.

Mr. Jayant Bardeskar Advocate for Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th JUNE, 2023.

P.C.:-

1. The State of Maharashtra has challenged the order dated 7th June 2019 passed by learned Additional Sessions Judge, Kalyan in Special A.C.B. Case No.25 of 2015 allowing the application for discharge preferred by Respondent.

2. The case of the prosecution is that, the Respondent/Accused was working as Police Naik. On 18th June 2014 at about 03.00 a.m., while the complainant was sleeping, Police Constable Sudhir Patil attached to Bazarpeth Police Station came to complainant's residence along with two Policemen. They were accompanied by Mujahid Rafiq Lanjekar. Police told the complainant that, he along with Mujahid Lanjekar have caused accident of Mahindra pick-up motor jeep at Khopoli. They were called at the Police Station for inquiry. Naved Qureshi and Mujahid Lanjekar denied the

allegations. complainant's cousin Maroof Shaikh was present in the room. Complainant was taken to Police Station. Complainant and Mujahid were assaulted. The accused told them that if, they want to go out of the police station, they will have to pay Rs.25,000/-. Otherwise FIR would be registered against them. At that point of time, Mujahid called his relative and paid an amount of Rs.25,000/- to the accused. Naved Qureshi was not having any amount. Therefore, he told the accused that, he would pay the amount within two to three days. Accused told him to make arrangement for amount within 2 to 3 days. Otherwise offence would register against them. Since the complainant was not willing to pay any amount to the accused, he approached the A.C.B. on 21st June 2014 and lodged the complaint. In accordance with the complaint of Naved Qureshi, trap was laid down. Verification of demand was carried. During verification, the accused demanded the amount of Rs.15,000/- from the complainant. Trap was not successful. Hence, it was withdrawn. However, on completing investigation, charge-sheet was filed against the accused for offence punishable under Section 7 of the Prevention of Corruption Act.

3. The Respondent preferred an application for discharge before the learned Special Court. The said application was allowed vide order dated 7th June 2019 and the respondent was discharged.

4. Learned APP submitted that, the impugned order is contrary to law and required to be set aside. There was sufficient evidence to frame the

charge against Respondent and proceed against him. Statement recorded during the investigation corroborate the version of complainant. While adjudicating the application for discharge, the Court was not required to appreciate the defence. There was evidence to show that, the accused had demanded the amount for exonerating the complainant. Conversation ensued between the complainant and the accused was recorded. Pre-trap panchnama and trap return panchnama were recorded. Assuming that, the trap had failed, there was evidence to show that, the accused had demanded bribe amount and committed offence under Section 7 of the P. C. Act. Charge-sheet was filed against the accused for offence under Section 7 of the said Act. The sanction was proper and the sanctioning authority was competent to accord the sanction to prosecute the Respondent/accused. Learned Special Judge has erred in coming to the conclusion that the sanctioning authority was incompetent to grant sanction.

5. Learned Advocate Mr. Bardeskar appearing for Respondent submitted that, there is no reason to interfere in the order passed by the learned Special Judge allowing the application for discharge. The prosecution has not been able to prove that the respondent has demanded the bribe amount. There was no evidence to frame charge against Respondent. Learned Special Judge has discussed the evidence on record and by assigning cogent reasons allowed the application for discharge. The conversation between accused and the complainant is vague. It does not

spelt out demand of bribe by respondent. The alleged incident of demand had occurred on 17th June 2014. The complainant approached ACB on 21st June 2014. There is no sufficient evidence to prove that there was demand of bribe by the accused. The complainant had alleged that there was demand of Rs.25,000/-. In the conversation, the complainant has stated that he has arranged amount of Rs. 15,000/-. The respondent can be appointed and removed by the Commissioner of Police, Thane and the Additional Police Commissioner, Thane was not empowered to accord the sanction. He was neither appointing authority nor empowered to remove the respondent from his service. Learned Counsel has relied upon the decision of the Apex Court in the case of **Nanjappa Vs. State of Karnataka (AIR 2015 SC 3060)**.

6. I have perused the charge-sheet and the impugned order passed by the trial Court discharging the Respondent. The prosecution case is based on the fact that during the intervening night of 17th June 2014 and 18th June 2014, the respondent and two other Policemen had visited the residence of complainant at about 03:00 am and informed him that he along with Mujahid were involved in accident case. They were taken to police station and assaulted. The accused then demanded an amount of Rs.25,000/- from them. Mujahid had arranged the said amount through his relatives and left the police station. The complainant was given time to bring the amount. He approached A.C.B. after three days on 21st June

2014. Verification panchnama was recorded on 21st June 2014 between 16:50 p.m. to 23:00 p.m.. The alleged conversation between the applicant and complainant was recorded. The said conversation does not spell out in clear terms whether applicant demanded the bribe amount. Pre-trap panchanama was recorded on 23rd June 2014. Trap withdrawal panchanama was recorded on 23rd June 2014. The accused did not meet complainant to accept the alleged bribe amount. FIR was recorded on 1st July 2014. During the course of investigation, statement of Mujahid Lanjekar was recorded on 1st August 2014. According to the complainant, Mujahid came with police and they were taken to Police Station and assaulted by the accused and bribe amount was demanded from them. However, Mujahid Lanjekar has stated that on 18th June 2014 he was at home. Police did not come to his house. He was not taken to house of Naved. He did not show house of Naved to Police. The information that he was taken to Bazarpeth Police Station and assaulted and amount of Rs.25,000/- was taken from him is false. He was not taken to Bazarpeth Police Station together with Naved. He has not given money to Police. He has no information about demand of Rs.25,000/- from Naved Qureshi by Police Officer Khedkar and Police Staff Sudhir Patil. From the tenor of statement of Mujahid, it is apparent that he has not corroborated the version of complainant Naved Qureshi. The prosecution is relying upon the statement of Marukh Harun Shaikh recorded on 21st August 2014. He has

stated that, Naved Qureshi, who is his cousin had given him call and informed him that on account of heavy rain, he cannot go to his residence at Mumbra and he would stay with him. Since he was alone, he called Naved at his residence. At 03.00 a.m. Mujahid Lanjekar visited his house and he was accompanied by 3 to 4 persons. They introduced themselves as police. They enquired about Naved and thereafter police entered into house and assaulted Naved. He was taken to Police Station along with Mujahid. On 18th July 2014 at about 01:30 noon he gave call to Naved, who informed him that he was taken to Bazarpet Police Station and enquiry was made with him about accident of vehicle and assaulted. Police demanded money and he has to hand over the said amount. After few days Naved met him and told him that Sudhir Patil was demanding money for not arresting him and complaint is lodged by him with A.C.B. and offence is registered against him. According to him, Naved came to his house. Statement of Naved does not indicate that, he is not privy to incident of demand of bribe by the accused. His statement run counter to statement of Mujahid. The conversation between accused and complainant indicate that the complainant himself was making arrangement of Rs. 15,000/-. It is also relevant to note that the case of the complainant was that the accused had demanded an amount of Rs. 25,000/-. All these aspects were taken into consideration by the trial Court while discharging the accused. It is also necessary to consider that the trial Court has noted the fact that the

respondent, who was working as Police Naik can be appointed or removed by the Commissioner of Police, Thane and the Additional Commissioner of Police, Thane, who has accorded his sanction to prosecute the Respondent was not competent to do so. The prosecution has not pointed out that, the Sanctioning Authority, who had accorded the sanction was empowered to grant sanction prosecute the respondent.

7. In the case of Nanjappa Vs. State of Karnataka (AIR 2015 SC 3060), it was observed that, the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution. The only error which the trial Court committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case.

Reference was made to the decision of **Baij Nath Prasad Tripathi Vs. The State of Bhopal and Anr. (AIR 1957 SC 494)** wherein it was held that the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non est in law.

8. Considering aforesaid the circumstances, I find no reason to take a different view from one expressed by the trial Court and to interfere in the impugned order.

ORDER

Criminal Revision Application is dismissed and disposed off.

(PRAKASH D. NAIK, J.)