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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 650 OF 2018

Nandkumar Anantrao Patil ... Applicant

V/s.

Anti Corruption Bureau, Solapur & Anr. ... Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 634 OF 2018

Arun Bhimrao Devkar ... Applicant

V/s.

Anti Corruption Bureau, Solapur & Anr. ... Respondents

Priyal G. Sarda, Adv. for the Applicant in REVN/650/2018.

Mr. Anant Devakate, Adv. for the Applicant in REVN/634/2018.

Ms. Anamika Malhotra, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 16, 2023

P.C. :

Both these revision applications are being decided by this common order, since common questions of fact and law arise therein.

2. The challenge in these revision applications is to the order dated 16/10/2018 passed by the Special Judge, Solapur refusing to grant the applicants discharge from the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 (for short "**PC Act**"). As such, the applicants herein ask for discharge from the offence under Section 12 of PC Act.

3. The facts in brief are as follows :-

a. The applicant-Arun Bhimrao Devkar was Police Inspector, serving with Gharkul Police Chowki under MIDC Police Station, Solapur. The applicant-Nandkumar A. Patil and co-accused Rajesh S. Mane, were also police officials, serving with Gharkul Police Chowki. Sau. Kamal Umakant Narayankar (complainant) was the resident of Gondhali Galli, Vijapur Naka, Solapur. She has a daughter by name Sarala. Sarala married Jitendra N. Katakdhond, a resident of Vijapur in the State of Karnataka. One Sau. Sneha Sainath Katake lodged a crime vide Crime Register No. 210/2016 with MIDC Police Station for the offence punishable under Sections 498-A, 323, 504 & 506 read with 34 of the Indian Penal Code, 1860 (for short “**IPC**”) against Sarala, her husband and six others. Jitendra, son-in-law of the complainant, therefore asked the complainant to visit the concern Police Station and verify ‘whether the crime has really been registered?’. The complainant therefore visited MIDC Police Station. She learnt that the crime has been registered and was being investigated by Police Inspector Shri. Arun Devkar (applicant herein). She therefore met Shri. Arun Devkar. Co-accused Rajesh Mane was present. The applicant-Arun Devkar told the complainant that she would require to spend money for getting bail. Instead of approaching the Court and spending money for obtaining bail, he be paid a sum of Rs. 25,000/-. He assured her that none of her relatives would be arrested. He would grant them bail. Those who have applied for anticipatory bail, he assured to give favourable report, so as to

ensure the Court would grant anticipatory bail. The complainant did not want to pay the bribe. She therefore approached Anti Corruption Bureau (for short “**ACB**”), Solapur and lodged the complaint.

b. The concerned officer of ACB, therefore secured presence of two officials working with Solapur Municipal Corporation, to act as ‘panch witnesses’.

c. It was decided to verify the demand. On 21/05/2016, the complainant along with panch witness met applicant-Arun Devkar and co-accused Rajesh Mane at Gharkul Police Chowki. Co-accused Rajesh Mane told her that he would talk to his boss (Saheb). He also made gestures suggesting demand of money. The applicant-Arun Devkar wrote a figure “25” on one paper suggesting it was a demand of Rs. 25,000/-. On request of the complainant for reducing the quantum of amount, he wrote the figure “24000”. The applicant-Nandkumar Patil was very much present there. He told the complainant that any how she would be required to spend 8-10 thousand rupees, as the advocate may also charge the fees. Instead of spending for court matter, they be paid the amount. All the conversation was tape-recorded. The Demand Verification Panchanama was drawn.

d. It is also the case of prosecution that on 23/05/2016, the complainant along with the panch witness, went to Gharkul Police Chowki to pay a sum of Rs. 25,000/- (currency notes applied with anthracene powder). Police Inspector Arun Devkar was not there.

The Trap Party had to return.

e. On 24/05/2016, the complainant informed the ACB officer that on the previous evening, the applicant-Arun Devkar had called her on phone and asked to come to Gharkul Police Chowki to pay a sum of Rs. 24,000/-. Accordingly a trap was laid. The complainant along with a panch witness went to Gharkul Police Chowki. The complainant met the applicant-Arun Devkar there and told him to have brought the money. She requested him to give favourable report. Thereupon, the applicant-Arun Devkar directed her to meet co-accused Rajesh Mane. The direction was with a gesture. The complainant therefore met Rajesh Mane (co-accused). Rajesh Mane in turn asked her to accompany him. He took her near the gate of Police Line, near South Asian Transport. Then he made a gesture indicating demand of bribe amount. The complainant in turn took out the currency notes worth Rs. 24,000/- and paid it to co-accused Rajesh Mane. He put the bribe money in his shirt pocket. On receipt of pre-determined signal, the Trap Party arrested Rajesh Mane. The bribe money came to be recovered from him. Seizure Panchanama was drawn. The arrest followed.

f. All the papers of investigation were placed before the respective competent authorities for obtaining sanction for prosecution of all the three accused, namely the applicants herein and co-accused Rajesh Mane. The authorities concerned did not grant sanction for prosecution of the applicants herein. The Trial Court therefore vide its order dated 16/10/2018 discharged both

the applicants of the offence punishable under Sections 7, 13(1) (d) read with 13(2) of PC Act. The Trial Court however refused to grant discharge from the offence punishable under Section 12 of PC Act.

4. Heard.

5. Learned Advocates for the applicants herein would submit that the case of prosecution indicate that both the applicants were proposed to be prosecuted for having made a demand of illegal gratification and receiving the same through co-accused Rajesh Mane. As such, the applicants herein were the principal offenders. The role of co-accused Rajesh Mane would be that of assisting the present applicants in receiving the bribe amount. As such, his role was as of an abettor of the offence. According to learned Advocates, the principal offender cannot therefore be charged with the offence of abetment. In support of their contentions, the learned Advocates placed reliance on the judgment of Bombay High Court in the case of **Kishore Khanchand Wadhwani and Another vs. State of Maharashtra through Assistant Commissioner of Police** reported in **2019 SCC OnLine Bom 13130**. They therefore urged for grant of revision applications.

6. Learned APP would on the other hand submit that there is evidence to indicate the applicants to have made a demand of illegal gratification and received the same through co-accused Rajesh Mane. Unfortunately the competent authority has not granted sanction for their prosecution. Still the applicants could

be prosecuted for the offence punishable under Section 12 of PC Act, for which no sanction under Section 19 of PC Act is required. She therefore urged for rejection of the revision applications.

7. Considered the submissions advanced. Perused the police-papers and the authorities relied on.

8. The prosecution case has been narrated hereinabove. In short, it is the case of prosecution that both the applicants herein made a demand of illegal gratification and the bribe was received by co-accused Rajesh Mane for and on behalf of the present applicants. As per the case of prosecution itself, both the applicants are the principal offenders. Section 19 of PC Act prohibits the Court from taking cognizable of the offence punishable under Sections 7, 11, 13 & 15 of PC Act except with the previous sanction.

9. Admittedly, the competent authority has not accorded sanction for prosecution of the present applicants. The Trial Court has therefore rightly discharged them from the offence punishable under Sections 7, 13(1)(d) read with 13(2) of PC Act.

10. Section 12 of the PC Act speaks of '**Punishment for abetment of offences**'. Section 12 of PC Act reads thus :-

“Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than

three years, but which may extend to seven years and shall also be liable to fine.”

11. The term “abet” appearing in Section 12 of PC Act, has not been defined in PC Act. One has therefore to fall back to the definition of offence of abetment given in Section 107 of IPC.

12. For better appreciation, Section 107 of IPC is reproduced, which reads thus :-

“107. Abetment of a thing. — A person abets the doing of a thing, who—

First. — Instigates any person to do that thing; or

Secondly. — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation — A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

13. The Trial Court referred to the definition of offence of abetment and turned down the prayer for discharge from the offence punishable under Section 12 of PC Act.

14. No doubt, the offence of abetment punishable under Section 12 of PC Act, can be committed by a public servant. For prosecution of the offence punishable under Section 12 of PC Act,

no sanction under Section 19 of PC Act is required. It is not that a principal offender can not be prosecuted for abetment of the offence, if facts and circumstances of the case make out his involvement in both of such offences. It would depend upon the facts and circumstances of each case.

15. In the present case, both the applicants allegedly made a demand of illegal gratification. When the complainant came to pay the same, the applicant-Arun Devkar directed her to meet co-accused Rajesh Mane. Rajesh Mane in turn took the complainant some distance away and made a gesture suggesting demand of illegal gratification. In response whereof the complainant paid him the bribe money. As such, the role of applicants herein suggests to be that of 'principal offenders'. It is the co-accused Rajesh Mane, who has received the bribe money for and on behalf of the present applicants. The present applicants therefore, could not be said to have abetted the main offence of making a demand of illegal gratification and consequential receipt of bribe money.

16. In this factual backdrop, the Trial Court should have granted the applicants discharge from the offence punishable under Section 12 of PC Act.

17. The facts in the case of **Pravinkumar Pitambar Deore vs. State of Maharashtra** reported in **(2018)2 MhL.J. (Cri.) 244**, are similar to the facts of the case in hand. This Court in the said case granted discharge from the offence punishable under Section 12 of PC Act.

18. In view of the same, this Court is therefore inclined to allow both the revision applications.

19. In the result, both the revision applications stand disposed of accordingly.

(R. G. AVACHAT, J.)