

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 18 OF 2016

APPLICANT : Vijay Bhopasingh Chavan, Aged
Major, R/o. Pusad, Taluka Pusad,
District Yavatmal.

//VERSUS//

NON-APPLICANT : State of Maharashtra through Deputy
Superintendent of Police, Anti
Corruption Bureau, Yavatmal.

Ms. Geeta Tiwari, Advocate h/f. Mr. P.C. Madkholkar, Advocate
for the Applicant.

Ms. Mayuri Deshmukh, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.

DATED : 9th JUNE, 2023.

ORAL JUDGMENT

In this revision application, challenge is to the order dated 27th October, 2015, passed by the learned Special Judge, Yavatmal, whereby the learned Special Judge rejected the application made by the applicant in Special Case No.3 of 2011 for his discharge. The applicant is the accused No.1. There are six accused in Special Case No.3 of 2011. All the accused are facing prosecution in Special Case No.3 of 2011 for the offences

punishable under Sections 120B, 465, 467, 471, 477A of the Indian Penal Code, 1860 (for short “IPC”) and Sections 7, 13(1)(d) read with Section 13(2), 11, 12 of the Prevention of Corruption Act, 1988 (for short “P.C. Act”).

02] The accused No.1 at the relevant time was the President of District Central Co-operative Bank, Yavatmal. It is the case of prosecution that the accused in furtherance of conspiracy prepared false documents as well as committed offence of cheating. It is the case of prosecution that the accused No.1, during his tenure in collusion with the other accused, misused his position and committed various offences pursuant to the conspiracy. The accused No.1 approved increment in pay-scale of the employees, which was not otherwise applicable to them. This act has put the Bank to financial loss. The arrears of increased salary were paid to the employees. The accused No.1, with others, made a wrongful gain for himself and others by accepting money out of the arrears paid to the employees. By misusing his power, he forced the employees to deposit 50% of the arrears into Union Fund and for that purpose, demanded bribe of Rs.15,00,000/-. Similarly, he received one Maruti Car as gift. After registration of the First Information Report (FIR), investigation was carried out. The

investigation ultimately culminated in filing of charge-sheet. The learned Special Judge took cognizance of the offences.

03] The accused No.1 applied for his discharge from the prosecution. It was his basic contention that he has been wrongly described as a public servant. It was contended that even if it is assumed that he was a public servant, there was no sanction for his prosecution. The prosecution against him was vitiated for want of sanction from the Competent Authority. It was further stated that since he was not a public servant, there was no question of prosecuting him for the P.C. Act offences.

04] The prosecution opposed his application for discharge. It was contended that the accused No.1 is a public servant within the meaning of Section 2(c)(ix) of the P.C. Act. Before filing the charge-sheet, an application was made to the Joint Registrar of Co-operative Societies to accord sanction. The Joint Registrar refused to accord sanction on the ground that he was not the Appointing Authority as well as the Authority empowered to remove him from service. According to the prosecution, considering the nature of illegal acts committed by the accused No.1, question of sanction would not arise.

05] The learned Special Judge conducted necessary enquiry permissible for the purpose of deciding the discharge application and found that the application was without substance and ultimately rejected the application. The accused No.1 is before this Court against the said order.

06] I have heard Ms. Geeta Tiwari, learned advocate holding for Mr. P.C. Madkholkar, learned advocate for the accused No.1 and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

07] In order to appreciate the submissions advanced by the learned advocate for the accused No.1, I have gone through the relevant record. I have also gone through the definition of public servant, as provided under Section 2(c)(ix) of the P.C. Act. It is *prima facie* seen that the accused No.1 falls within the definition of public servant, as provided under Section 2(c)(ix) of the P.C. Act. It is not the case of prosecution that sanction was not applied for. It is undisputed that the Joint Registrar of Co-operative Societies was requested to accord sanction for prosecution. The Joint Registrar of Co-operative Societies opined that he was neither the Appointing Authority nor the Authority empowered to remove him from service and therefore, not competent to accord sanction.

08] In the facts and circumstances, the question that needs to be addressed by the trial Court, at the stage of trial, would be as to whether the accused No.1 is a public servant. The next important question that needs to be addressed by the trial Court would be the consequences of refusal of the Joint Registrar of Co-operative Societies to accord sanction. Similarly, the Court would be required to decide whether, in the facts and circumstances, sanction for his prosecution was necessary.

09] The learned Special Judge on the basis of the law laid down in the case of *Santaram Balya Sankhe & Ors. Vs. Kaliram Gajanan Sankhe & Anr. [2001 ALL MR (Cri) 640]*, has held that sanction for his prosecution would not be necessary, more particularly, when the State is not empowered to appoint or remove the President of the District Central Co-operative Bank. The learned Special Judge has further observed that the accused No.1 is charged with the offence of abetment under Section 12 of the P.C. Act. The offence of abetment is a separate, distinct and substantive offence. Section 12 does not find mention in the list of offences for which sanction would be necessary as provided under Section 19 of the P.C. Act. It is further apparent on the face of record that all the accused are prosecuted for commission of non P.C. Act offences

read with P.C. Act offences. The learned Special Judge has observed that since the accused No.1 is prosecuted for the offence of abetment under Section 12, sanction would not be necessary.

10] It is to be noted that the observations made by the learned Special Judge are the *prima facie* observations based on the material for the purpose of deciding the discharge application. It needs to be stated that despite these *prima facie* observations on the basis of material, the accused still has right to raise all the points and defences available to him under the law at the stage of trial. The scope of enquiry, while deciding the application for discharge, is very limited. The enquiry conducted by the learned Special Judge was limited to decide the application for discharge. The learned Judge has not considered the pros and cons of the case as well as the evidence placed on record by the prosecution.

11] On going through the material on record, I am of the opinion that the learned Special Judge was right in rejecting the application for discharge. Even if it is assumed for the sake of argument that the accused No.1 is not covered by the definition of public servant, in view of the non P.C. Act offences alleged to have been committed by him pursuant to the criminal conspiracy, he cannot be delinked from the remaining accused as well as from the

non P.C. Act offences for the limited purpose.

12] In this view of the matter, in my opinion, there is no substance in this application. The material available on record, rightly found by the learned Special Judge to be sufficient to frame the charge against the accused. The revision application, therefore, deserves to be dismissed. It is accordingly **dismissed**.

13] It is seen that the charge-sheet in this case was filed in the year 2011. Due to pendency of this revision application, the Special Case against the remaining accused as well as the accused No.1 was stalled. Therefore, in the facts and circumstances, hearing of Special Case No.3 of 2011 is expedited. The learned Special Judge, Yavatmal is directed to dispose of Special Case No.3 of 2011 expeditiously and in any case within a period of six months from today.

(G. A. SANAP, J.)

Vijay