

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

CRIMINAL WRIT PETITION NO. 761 OF 2022

PETITIONER : Shri Eknath Dattatray Katkade, Age
36 years, Occ. Service, R/o. Plot
No.12, Sneh Nagar Takiya Ward,
Bhandara City, Tah. & Dist. Bhandara-
442701.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through Police
Station Officer, Mohadi Police Station,
District-Bhandara.

2. State of Maharashtra, through Anti-
Corruption Bureau, Tah. & Dist.-
Bhandara.

Mr. S.P. Bhandarkar, Advocate for the Petitioner.
Mr. S.A. Ashirgade, APP for the Respondents/State.

CORAM : G. A. SANAP, J.
DATED : 15th MARCH, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned advocates for the parties.

02] In this criminal writ petition, the petitioner, who is accused No.1, has challenged the order dated 31st May, 2022 passed by the learned Additional Sessions Judge, Bhandara, whereby the learned Additional Sessions Judge rejected the application at Exh.4 made by the accused No.1 for his discharge.

03] The facts giving rise to this petition are as follows:

The petitioner will hereinafter be referred to as the accused No.1. On the basis of the report dated 22nd April, 2019 by the informant-Naresh Manik Ishwarkar, a Crime bearing No.50/2019 was registered against the accused Nos.1 and 2, who are working as Clerks in the office of Tahsildar, Bhandara for the offence punishable under Section 7(A) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”).

04] It is the case of the prosecution that Navnath Katkade Naib-Tahsildar, Bhandara is the elder brother of the accused No.1. Navnath Katkade Naib-Tahsildar during his usual inspection found one JCB bearing Vehicle No.MH-40 BF-3299 at Mouza Kushi to Roha Road. The said Naib-Tahsildar gave a signal to the driver to stop the JCB, but the driver refused to stop the JCB. The

Naib-Tahsildar, therefore, had a suspicion. The driver failed to give a satisfactory answer. The driver refused to sign on any documents. Therefore, Naib-Tahsildar Katkade seized the said vehicle and handed over the same in the custody of Mohadi Police Station (Bhandara) in the night of 4th March, 2019.

05] The genesis of the case of the prosecution lies in this incident. It is the case of the informant that he had taken the JCB on rental basis. The same was used for loading the sand, which was already stored at the bank of river, in the tippers and trucks. It is his case that Naib-Tahsildar Katkade demanded Rs.2,00,000/- for releasing the vehicle. He, therefore, reported the matter to the Anti Corruption Bureau, Bhandara (hereinafter referred to as “the ACB”). The accused Nos.1 and 2 are working as Clerks in the Office of Tahsildar, Bhandara. The informant contacted the accused Nos.1 and 2. It is his case that they demanded bribe of Rs.2,00,000/- for release of the vehicle. They assured the informant that on payment of bribe of Rs.2,00,000/-, the JCB vehicle would be immediately released.

06] After reporting the matter to the ACB, Bhandara, the ACB, Bhandara proceeded further. The complaint was recorded.

The verification panchnama of the information was drawn. The Investigating Officer recorded the telephonic conversation between the informant and the accused. The accused Nos.1 and 2 during their conversation with the informant made a demand of the money from him to be paid to the Superior Officer for the purpose of release of JCB. As per the time and place given by the accused Nos.1 and 2 for acceptance of the money, the informant went to their office. However, at that time, they were not found and therefore, the bribe amount could not be paid to them. It is a case of the prosecution that the conversation between accused Nos.1 and 2 on one hand and the informant on the other hand clearly reveals the demand of gratification for release of the vehicle. The Investigating Officer conducted the investigation and found sufficient material against the accused Nos.1 and 2. The material was not found against the Naib-Tahsildar Katkade. Therefore, the charge-sheet came to be filed against the accused Nos.1 and 2.

07] The accused No.1, after filing of the charge-sheet, applied for his discharge. It is his case that the report lodged is false and frivolous. He never demanded money from the informant. It is his case that the JCB vehicle was already released by the Naib-Tahsildar. Therefore, there was no question of making the demand

of money. It is further his case that on 16th March, 2019, the District Mining Officer-Shri Suresh Naitam had conducted raid and seized the trucks of the complainant loaded with mining minerals. The complainant and others assaulted the District Mining Officer and his companions. On the basis of the report of the District Mining Officer dated 17th March, 2019, a Crime bearing No.30/2019 for the offences punishable under Sections 353, 307, 143, 323, 504 read with Section 34 of the Indian Penal Code, 1860 and Section 135 of the Maharashtra Police Act, 1951 and Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966 has been registered against the informant in this case and others.

08] It is stated that brother of accused No.1 Mr. Navnath Katkade Naib-Tahsildar has acted as panch for the spot panchnama and the seizure panchnama of two trucks. According to the accused No.1, therefore, the informant had grudge against him and his brother. The informant in order to take revenge against his brother lodged a false report. It is his case that on the basis of the material compiled in the charge-sheet, the offence punishable under Section 7(A) of the PC Act has not been made out. It is his case that no material has been placed on record to frame the charge against him.

He, therefore, applied for his discharge.

09] The State filed reply to this application and opposed the same. It is the case of the State that the recorded conversation between the informant and the accused Nos.1 and 2 proves beyond doubt that they demanded the money for release of JCB. It is contended that the material compiled in the charge-sheet is sufficient to presume that the accused have committed the offence.

10] The learned Additional Sessions Judge on consideration of the material placed on record found that there was no substance in the application and as such rejected the application for discharge. The accused No.1, being aggrieved by this order, is before this Court.

11] I have heard Mr. S.P. Bhandarkar, learned advocate for the accused No.1 and Mr. S.A. Ashirgade, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

12] The learned advocate for the accused No.1 submitted that the accused No.1 has been falsely implicated in this case, to

take revenge against his brother. The learned advocate took me through the transcription of the recorded conversation between the informant and the accused No.1 and submitted that in the said recorded conversation, there is no whisper about demand of money by the accused No.1 for release of JCB vehicle. The learned advocate further submitted that the vehicle was already released on 14th March, 2019 and, therefore, there was no question of making a demand of money after 14th March, 2019 by the accused No.1. The learned advocate further submitted that the accused No.1 in no manner was involved in the decision making process for the purpose of release of the vehicle. The learned advocate submitted that the case is sought to be made out that the accused Nos.1 and 2 demanded the money to ensure the release of the vehicle in connivance with the Superior Officers. The learned advocate submitted that the material compiled in the charge-sheet is not *prima facie* sufficient to presume that the accused No.1 has committed the offence punishable under Section 7(A) of the PC Act. In order to substantiate his submission, the learned advocate has placed reliance on the decisions in the cases of *Union of India Vs. Prafulla Kumar Samal and Another [(1979) 3 SCC 4]* ; *Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another [(2008) 2 SCC 561]* ; and *State of Tamil Nadu by Inspector of*

Police Vigilance and Anti-Corruption Vs. N. Suresh Rajan and Others [(2014) 11 SCC 709].

13] The learned Additional Public Prosecutor for the State submitted that during the course of investigation, the telephonic conversation between the informant and the accused No.1 was recorded and duly verified. The learned Additional Public Prosecutor further submitted that the recorded conversation clearly shows that the accused No.1, being the brother of the Naib Tahsildar, was acting as the middleman to settle the dispute. The learned Additional Public Prosecutor submitted that there is direct demand of money by the accused No.1. The learned Additional Public Prosecutor submitted that at the stage of deciding the discharge application, the material on record is required to be sifted for a limited purpose, to see whether the same is sufficient to presume that the accused has committed the offence or not. The learned Additional Public Prosecutor submitted that, if the material is considered and appreciated as submitted by the learned advocate for the accused No.1, then the same would be nothing short of holding a mini trial. The learned Additional Public Prosecutor submitted that holding a mini trial is not permissible at the stage of discharge. The learned Additional Public Prosecutor

submitted that the learned Additional Sessions Judge has recorded the cogent reasons, while rejecting the application for discharge.

14] In order to appreciate the rival submissions, I have gone through the record and proceedings. It is to be noted that there is no dispute about the seizure of the JCB vehicle of the informant. There is also no dispute that the brother of the accused No.1, who is Naib-Tahsildar, had seized the said JCB vehicle and handed over the same in the custody of Police Station, Bhandara. The genesis of the case of the prosecution lies in the incident of seizure of the JCB vehicle. The accused Nos.1 and 2 are working as Clerks in the Office of Tahsildar, Bhandara. It, therefore, goes without saying that they are not strangers and outsiders as far as the incident of seizure and subsequent release of the JCB vehicle. The prosecution has relied upon the recorded conversation between the informant and the accused Nos.1 and 2.

15] It is to be noted that when this matter was reported to the ACB, Bhandara by the informant, the ACB, Bhandara took the cognizance and by following the procedure moved into action. The conversation between the accused No.1 and the informant was recorded in presence of the panch witnesses. The transcription of

the recorded conversation is the main piece of evidence relied upon by the prosecution. It is further pertinent to note that the informant had gone to the office of the accused Nos.1 and 2 to pay the money to them. However, they were not found in the office and, therefore, the money could not be paid to them. The important aspect with regard to the acceptance of the money is not present in this case. However, the same by itself cannot extend any benefit to the accused persons as long as the prosecution justifies the actual demand of money by them for release of the vehicle. Perusal of the transcription of the recorded conversation would *prima facie* show that there was a demand of money by the accused Nos.1 and 2. Perusal of the transcription of the recorded conversation of the accused Nos.1 and 2 with the informant at this stage is sufficient to presume that they demanded the gratification for release of the JCB vehicle. The recorded conversation is the best evidence at this stage available on record to *prima facie* crystallise the involvement of the accused Nos.1 and 2. On the basis of the recorded conversation and the other material, the application for discharge could not have been allowed. The said material is sufficient to presume that the accused Nos.1 and 2 have committed the offence under Section 7(A) of the PC Act.

16] It is the defence of the accused No.1 that in order to take revenge, he has been falsely implicated in this case. At the outset, it needs to be stated that for the purpose of framing of charge or for the purpose of deciding the discharge application made by the accused, the Court has to primarily consider the material collected by the Investigation Officer and compiled in the charge-sheet. At the stage of framing of charge or hearing of the discharge application, the material relied upon by the accused to rebut the material relied upon by the prosecution at such a preliminary stage, cannot be considered. It is not out of place to mention that the defence of the accused cannot be given primacy at the stage of framing of charge. The Court has to accord the primacy to the material compiled in the charge-sheet by the prosecution. The material placed on record by the accused in support of his probable defence cannot be made the basis of discharge of the accused.

17] In my view, the law does not permit the Court to undertake such an exercise. In this context, a useful reference can be made to the decisions of the Hon'ble Apex Court in the cases of *Tarun Jit Tejpal Vs. State of Goa and Another* [(2020) 17 SCC 556] ; *Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijaya and Others* [(1990) 4 SCC 76] and *Sajjan Kumar*

Vs. Central Bureau of Investigation [(2010) 9 SCC 368], wherein it has been held that appreciation of evidence at the time of framing of the charge or while considering discharge application, is not permissible. The Court is not permitted to analyse all the material touching the *pros* and *cons*, reliability and acceptability of the evidence. In the case of *Tarun Jit Tejpal* (supra), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth piece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offences. At this stage, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is further held that the law does not permit a mini trial at the stage of

deciding the discharge application or at the time of framing of charge.

18] It would be equally necessary to consider the law laid down in the decisions relied upon by the learned advocate for the accused No.1. In my view, the proposition of law laid down in the decisions relied upon by the learned advocate is not different from the one laid down in the case of ***Tarun Jit Tejpal*** (supra). In my view, therefore, the proposition in those decisions is not applicable to the case of the accused at this stage.

19] In the case of ***Union of India Vs. Prafulla Kumar Samal and Another*** (supra), it is held that in the exercise of jurisdiction under Section 227 of the Cr.PC, the Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court. It is held that, this, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. It is held that the test to determine a *prima facie* case would naturally depend upon the facts of each case and it is as such difficult to lay down a rule of universal application.

20] In the case of *Onkar Nath Mishra and Others* (supra), it is held that at the stage of framing of charge the Court is not expected to go deep into the probative value of the material on record. The Court has to form a presumptive opinion as to existence of the factual ingredients constituting the alleged offence.

21] In the case of *State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption Vs. N. Suresh Rajan and Others* (supra), it is held that the mini trial is not contemplated at the stage of considering discharge application. The Court at this stage has to proceed with an assumption that the materials brought on record by the prosecution are true. It is held that only probative value of the materials has to be gone into to see if there is a *prima facie* case for proceeding against the accused. If the Court on the basis of the materials thinks that the accused *prima facie* might have committed the offence, it can frame the charge.

22] The facts and material relied upon by the prosecution against the accused as considered above would show that it fits in the parameters of the law down in the decisions mentioned above. The material on record is sufficient to frame the charge against the accused. If the submissions advanced by the learned advocate for

the accused are accepted and the material is tested on the touchstone of credibility at this stage, then it would be nothing short of holding a mini trial. The probative value of the material and the pros and cons of the case of the prosecution cannot be gone into at this stage. It is settled law that at the stage of framing of charge or while deciding the discharge application for the limited purpose, the Court is required to sift the material and see whether the material is sufficient to presume that the accused has committed the offence. If the material is sufficient to satisfy this test, then the Court has to frame the charge.

23] In my view, therefore, the learned Additional Sessions Judge was right in rejecting the application. No case has been made out to interfere with the order passed by the learned Additional Sessions Judge, Bhandara. Accordingly, the writ petition stands **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)