



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

WRIT PETITION NO. 3280 OF 2023

SAVITA ALIAS BHOLAI RAMRAO
KALE

..PETITIONER

VS.

THE STATE OF MAHARASHTRA
AND ANR.

..RESPONDENTS

Adv. Sanjay Kshirsagar for the Petitioner.

Mr. A.R. Patil, APP for the State.

P.I. Pravin N. Nimbalkar, ACB Pune.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 02, 2024

P.C. :

1. Heard learned counsel for the petitioner and learned
APP for the State.

2. The order dated 09/08/2023 passed by the Additional
Sessions Judge, Pune, rejecting the application made by the
petitioner - accused No.2 for discharging her under Section
227 of the Code of Criminal Procedure (Cr.P.C.) below
exhibit 3 in Special Case No. 317 of 2023 is under
challenge.

3. The complaint was filed by the complainant on

25/11/2019 before the Anti-Corruption Bureau (ACB), Pune, alleging that accused No.1 demanded a bribe of Rs.20,000/- for getting work done from the petitioner - accused No.2 who was working as a Talathi. The work pertained to effecting relevant mutation entry in the records. As per the procedure, a trap was laid which was preceded by recording conversation between the complainant, accused No.1 and the petitioner.

4. In the statement made on 25/11/2019, the complainant stated that accused No.1 was demanding the bribe amount of Rs.20,000/- at the behest of the petitioner to get the work done. In the complainant's statement recorded on 26/11/2019, wherein all requisite details have been set out by the complainant, in the penultimate paragraph, it has been stated by the complainant that the accused No.1 though was not a public servant projected himself to be a public servant and demanded a bribe amount of Rs. 15,000/- and hence the complaint against accused No.1.

5. *Prima Facie*, it appears that the complainant made the

complaint only against accused No.1 and not against the present petitioner. Even the FIR was accordingly registered wherein the accused No.1 was shown as the only accused. The investigation also was against the accused No.1.

6. Learned APP while opposing the petition submitted that the totality of the circumstances have to be taken into consideration as the materials on record would justify invocation of Section 12 of the Prevention of Corruption Act, 1988, (for short "PC Act") against the petitioner, may be at a later stage.

7. It is pertinent to note that when the FIR was registered on 26/11/2019, the same was only against accused No.1 under Section 7A of the PC Act. On the basis of the legal opinion and in view of the subsequent correspondence between the concerned officials of the investigating agency, Section 12 of the PC Act came to be added on 13/02/2023 whereupon the petitioner was shown as accused No.2.

8. It is the submission of the learned counsel for the petitioner that from the face of the FIR, it can be seen that

the complainant's grievance is only against the accused No.1. It is submitted that after considering all the relevant factors the complainant states he was satisfied that though accused No.1 is not a public servant, he projected himself to be a public servant and demanded the bribe amount. I find that there was no demand or acceptance by the present petitioner. The allegation is that at the petitioner's behest the demand and acceptance was by accused no.1 who was her agent. The learned Judge of the Special Court rejected the application for the reasons which find place in paragraph Nos. 8, 9 and 12. The same read thus:

"08 There is sufficient material to frame charge against accused No. 1. But it is argued on behalf of accused No.2 that she has not demanded or received any amount of bribe from complainant. Moreover, she has no connection with accused No.1. But allegations against accused No.2 is of not demanding or accepting bribe, but of abetting and assisting accused No.1 to take bribe on her behalf. Therefore, her action of demanding or accepting bribe is irrelevant at this stage.

09 There is specific allegations against her that, she has asked complainant to contact accused No.1 who is private person for his work. This allegation is sufficient prima facie to frame charge against accused No.2. She is a public servant. She has no reason to ask original complainant to contact accused No.1 as alleged. Though it is burden on prosecution to prove her involvement as mentioned above, at this stage, prima facie, these allegations

are sufficient to frame charge against accused No.2. Alleged work of complainant was in her public duty. Therefore, it cannot be said that, there is no material to frame charge against her.

12 In short, on perusal of FIR, original complaint of complainant and other material produced along with charge-sheet, it is clear that, there is sufficient material to frame charge against accused No.2. She is not entitled for discharge. Hence, application deserves to be rejected."

9. Learned APP submitted that there is no reason to interfere with the impugned order as the entire case of the respondent is that the bribe amount was demanded by Accused No.1 at the behest of the present petitioner and therefore, the impugned order cannot be faulted.

10. In my opinion, the application for discharge, at exhibit 3 in Special Case No. 317 of 2023 needs to be considered afresh by the Special Court. It is the specific stand of the complainant on the basis of which the FIR came to be registered, that his grievance and complaint is against the accused No. 1, who had projected himself to be a public servant thereby accepting the bribe amount. The FIR was, therefore, registered initially only against the accused No.1 and even the investigation proceeded against him only. This aspect has not been dealt with by the trial Court.

11. It is made clear that I am not expressing any opinion on the merits or otherwise of the contentions raised. The application needs to be considered afresh in light of the above observations along with the materials on record.

12. Keeping all the contentions open, the impugned order dated 09/08/2023 passed by the Additional Sessions Judge, Pune, rejecting the application made by the petitioner - accused No.2 for discharging her under Section 227 of the Cr.P.C. in below exhibit 3 in Special Case No. 317 of 2023 is set aside. The application below exhibit 3 be considered on its own merits and in accordance with law afresh.

13. The writ petition is disposed of in the above terms.

(M. S. KARNIK, J.)