

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.170 OF 2024

Kailas Digambar Masal

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Sanjeev Kadam with Mr. Ramdas Hake Patil, Ms Varsha Thorat, Mr. Soheli Mujawar, Mr. Atharva Nalawade for the Applicant.

Mr. Hiten S. Venegaonkar, SPP with Ms Shilpa Talhar, APP for Respondent-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 July 2024.

P.C. :

1) Revisionary jurisdiction of this Court is invoked by the Applicant challenging order dated 10 January 2024 passed by the learned Special (ACB) Judge, Solapur, rejecting the application filed by him seeking discharge under Section 227 of the Code of Criminal Procedure, 1973.

2) Perusal of the Discharge Application dated 1 August 2023 filed by the Applicant would indicate that what was pleaded by him in the application was essentially the point about refusal of sanction for prosecution by the Competent Authority by order dated 26 November 2020. The Applicant sought discharge on the ground that in absence of sanction for prosecution,

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his prosecution under Section 7-A of the Prevention of Corruption Act, 1988 (**Act of 1988**) was not maintainable and that therefore he deserved to be discharged. The learned Special Judge considered the provisions of Section 19 of the Act of 1988 and has arrived at a conclusion that for offence under Section 7-A of the Act, the prosecution sanction is not necessary. On this ground, Applicant's application appears to have been rejected.

3) I have heard Mr. Kadam, the learned counsel appearing for the Applicant, who would submit that a plain reading of Section 7A of the Act of 1988 would indicate that the same does not apply to a public servant. He would submit that all acts relating to bribery by a public servant are essentially covered by Section 7 and that Section 7-A essentially seeks to bring private persons/intermediaries/agents within the ambit of the Act of 1988. He has relied upon the Statement of Objects and Reasons as well as the Parliamentary debates for driving home the point that the objective behind incorporation of Section 7-A in the Act was essentially to cover private persons, other than public servants.

4) Thus, contrary to what was pleaded in the discharge application, it is sought to be urged before me that the Applicant has been wrongfully charged under Section 7A of the Act 1988, which does not apply to him. In my view this argument apparently not raised before the learned Judge, who did not have an opportunity to deal with the same. Since the Discharge Application was limited to the issue of refusal of sanction, the learned Judge thought it prudent to reject the discharge application on the ground that Section 7-A does not require any prosecution sanction.

5) If the Applicant now wants to contend that Section 7A cannot be made applicable to him, he will have to raise this issue before the learned Judge, who would then have an opportunity to deal with the said issue. Revisionary jurisdiction of this Court cannot be exercised in absence of any finding by the learned Judge on the issue of applicability or otherwise of Section 7-A of the of Act, 1988.

6) Mr. Kadam, after taking instructions from his client, would seek leave to withdraw the Revision Application with liberty to file a fresh application for discharge under Section 227 of the Cr.P.C. for raising the issue of applicability of Section 7-A to the Applicant. He would however express an apprehension that the learned Judge likely to frame charge on the adjourned date of 20 July 2024. He would therefore submit that till the fresh application for discharge is decided, the learned Judge be directed not to frame charge against the Applicant.

7) Criminal Revision Application is accordingly permitted to be withdrawn and disposed of with liberty to the Applicant to file a fresh application for discharge by raising the issue of applicability of Section 7-A of the Act of 1988 to him. If such application is filed within 10 days from today, the learned Judge shall accord due priority for its expeditious disposal. Till the application is decided, the learned Judge is requested to defer framing of charge against the Applicant.

[SANDEEP V. MARNE, J.]