



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 54 OF 2020

Dheerendrasingh Vijaysingh Chouhan,
Age : 37 years,
Occupation : Service - Junior Telecom Officer,
R/o : At present : Office at Divisional Engineer,
Bharat Sanchar Nigam Limited,
Solapur.

... Applicant
[Orig. Accused No.2]

Versus

The Union of India,
Through Superintendent of Police,
CBI, ACB, Pune.

... Respondent

.....
Mr. Joydeep Chatterji, Advocate for the Applicant.
Mr. Sachin Panale, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.01.2025

Pronounced on : 20.01.2025

ORDER :

1. In instant revision, exception has been taken to the order dated 04.02.2020 passed by learned Additional Sessions Judge, Latur on application Exhibit 10 in Special Case (ACB/CBI) No. 10/2019 thereby rejecting said application for discharge from Crime No. RC Pune/2019/A/0004 of 2019 dated 24.05.2019.

2. Learned counsel for the applicant pointed out that applicant is falsely implicated in the above crime. He is mere Junior Telecom Officer. Primary allegations are against main accused Shinde who is superior officer of present applicant. He pointed out that, there are allegations that, there was demand of bribe of Rs.6,00,000/- for clearing bills of original complainant. Learned counsel pointed out that after investigation was over, applicant and said Shinde were chargesheeted by CBI. Learned counsel pointed out that, there is no demand or acceptance by present applicant. He pointed out that there were repeated attempts to bribe Shinde and there are various pre-trap panchanamas. That, applicant's name does not figure in such procedure. He is first time implicated in post-trap panchanama. Learned counsel pointed out that there is demand as well as acceptance by main accused. His fingers carried traces of anthracene. Thus, according to learned counsel, merely being present and being in company of main accused, there is false implication. Learned counsel further took this Court through voice verification panchanama drawn by investigating machinery. Learned counsel took this Court through the alleged transcript showing name of applicant conversing on phone. However, according to learned counsel, none of the conversations suggest that he was interested in seeking bribe or to be

hand in gloves with main accused Shinde for demanding or receiving bribe.

3. Learned counsel for the applicant further submitted that, even going through the entire chargesheet, there is no incriminating material to make him face trial. That, there are mere general conversations, but when they are not in connection with any demand or acceptance, applicant ought not to have been impleaded and chargesheeted. For above reasons, learned counsel seeks indulgence in setting aside the impugned order passed by learned Special Court on application Exhibit 10.

4. Learned counsel for respondent CBI strongly opposed by submitting that, as regards present applicant is concerned, Section 12 of the Prevention of Corruption Act, 1988 [PC Act] has been invoked. That, there is sufficient material that present applicant and main accused had demanded illegal gratification for clearing bills. That, both were together while conversations were made with complainant and there is ample evidence in the form of transcript. That, applicant's name and participation is coming throughout during the process of demand. Therefore, according to him, there being sufficient incriminating material, no fault can be found in the impugned order, and resultantly he prays to reject the application.

5. Present proceeding is on account of rejection of application seeking discharge by invoking Section 227 of Cr.P.C. Before advertng to the merits in the case in hand, it would be fruitful to first give brief account of the settled legal precedents on entitlement of discharge under Section 227 Cr.P.C.

In the case of ***Sajjan Kumar v. CBI*** MANU/SC/0741/2010 : (2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad

probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial..."

In ***Asim Shariff v. National Investigation Agency*** MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

Some other rulings on this aspect can be named as ***State of Maharashtra and others v. Som Nath Thapa and others*** (1996) 4 SCC 659; ***State of M.P. v. Mohanlal Soni*** (2000) 6 SCC 338; ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460; ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148.

6. Keeping above legal requirements into consideration, it is clear that the *ratio decidendi* and rationale is that, only when there is *prima facie* no material suggesting complicity of the accused, and making such person face trial would be a futility, only then, to avoid the ordeal of trial, discharge can be granted.

7. Here, on going through the complaint, though there are allegations of demand against one Shinde, the transcript running in volume carries conversation at the end of present applicant also with informant. There is a clear indication regarding talks in the background of demand. Therefore, it cannot be said that there is no incriminating material at all. In view of settled position, at this stage it is only to be seen whether there is material in the chargesheet to make accused face trial. Sufficiency of material is the sole criteria. This Court, while exercising powers under Section 227 of Cr.P.C. cannot appreciate or analyze the material. Moreover, learned APP has already clarified that present applicant has been impleaded as co-accused by invoking Section 12 of the Prevention of Corruption Act, 1988 (for short, "the PC Act") i.e. abetting, aiding in commission of offence under Sections 7 to 11 of the PC Act. Therefore, in the light of above discussion, this Court also, as like learned trial court, after

going through the papers on record, does not find any substance and merit about entitlement of applicant to be discharged by invoking Section 227 of Cr.P.C. Hence, I proceed to pass the following order:

ORDER

The Criminal Revision Application is rejected.

[ABHAY S. WAGHWASE, J.]

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