



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2288 OF 2022

Vinayak S/o Sakharam Thavil,
Age : 41 Years, Occ. Service,
R/o. Anikesh Plaza, Behind Sona Gas Agency,
Pimpalner, Tq. Sakhri, Dist. Dhule ... Applicant

VERSUS

1. The State of Maharashtra,
Through In-charge Police Inspector,
Pimpalner Police Station,
Tq. Sakhri, Dist. Dhule
2. Komal Ishwarlal Devare,
Age : 34 Years, Occ. Agriculture,
R/o. Mali Glli, Pimpalner,
Tq. Sakhri, Dist. Dhule

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Mr. V. D. Sapkal, Senior Advocate i/n Adv. Sandip R.
Sapkal, Advocate for the applicant.
Adv. R. P. Gour, A.P.P. for Respondent No.1 State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ**

DATED : JANUARY 16, 2025

JUDGMENT (PER ROHIT W. JOSHI, J):-

1. The applicant in the present matter was working on the post of Additional Tahsildar Pimpalner Taluka Sakri, District Dhule in the year 2022. One Madhukar Yashwant More had filed an application before him for conversion of land bearing Gut No. 176/4 admeasuring 3 H 78 R from class II to class I. The applicant claims that he had issued a communication

dated 04.05.2022 directing Shri. More to complete some formalities for processing the application and since the compliances were not made, the said application came to be rejected on 14.06.2022.

2. Respondent No.2 in the present matter claims that she had entered into an agreement with said Mr. More in order to purchase the said land bearing Gut No. 176/4. She states that the application for conversion of status of land from class II to class I was made by the land owner Shri. More in order to complete the proposed sale transaction. Respondent No.2 claims that she had arranged all the relevant papers as required by the applicant vide communication dated 04.05.2022 and had personally met the applicant in relation to the proposal for conversion of status of land from class II to class I. She claims that the applicant had demanded bribe of Rs. 25,000/- for the purpose of forwarding report to the office of Collector Dhule for taking appropriate decision on the proposal for conversion of land.

3. In this backdrop, Respondent No.2 claims that she did not desire to pay bribe to the applicant and, therefore, made a complaint against the applicant to the Deputy Superintendent of Police (hereinafter referred to as 'Dy.S.P.') on 08.06.2022.

She states that the Dy.S.P. had arranged for two government servants to act as *panchas* who were introduced to her and she was directed with proper instructions to meet the applicant for the purpose of verification of demand. She states that a digital voice recorder was provided to her for recording the conversation regarding alleged demand. Respondent No. 2 and one panch reached the Tahsil office and went to the chamber of the applicant where the applicant and one Sandeep Musale were already sitting. According to her, the applicant pointed out short-comings and deficiencies in the proposal to her and other person present in the Chamber viz Sandeep Musale also expressed his agreement with the views of the applicant. During the course of conversation, Sandeep Musale signalled respondent No.2 to meet him outside the cabin of the applicant and there he informed her that the applicant had demanded a sum of Rs. 35,000/- to do needful in the matter. She claims that she bargained with said Musale and accordingly arrived at figure of Rs. 25,000/- to be paid to the applicant as bribe for the work of forwarding report to the office of Collector, Dhule. According to her, the voice recording between the applicant, Sandeep Musale and herself was then verified by the Dy.S.P. and both panchas and accordingly a trap was planned to be conducted on the following day i.e. on

09.06.2022. She has stated that after making all the arrangements she tried to contact the private person, Sandeep Musale in order to give the amount to him as was decided and planned. She states that Sandeep Musale avoided to meet her on that day and expressed that probably he had a doubt about the intention of respondent No.2 and, therefore, deliberately did not meet her in order to accept the amount. On the basis of these allegations, she has lodged F.I.R with police station, Pimpalner, District Dhule on 24.06.2022 vide F.I.R No. 155 of 2022 for offences punishable under Section 7(a) and 12 of the Prevention of Corruption Act, 1988.

4. Pursuant to the F.I.R respondent No.1 conducted investigation and has filed a charge sheet in the matter. The present application is filed under Section 482 of the Code of Criminal Procedure in order to challenge the said F.I.R.

5. Learned Senior Advocate Mr. V. D. Sapkal appearing on behalf of the applicant has submitted that the F.I.R lodged by respondent No.2 is with an ulterior motive. He states that prior to this, respondent No.2 had tried to implicate the applicant in an offence under Section 354-A of the IPC, however, in the said matter the prosecution has given a clean cheat to the applicant by issuing 'B' summary recording that

the complaint was 'false'. Copy of the said 'B' summary dated 31.12.2021 is filed with the petition as annexure 'A'. As regards the merits of the present matter, he submits that, the script of alleged demand does not demonstrate that the applicant had demanded or even that the the private individual Sandeep Musale, who is arrayed as accused No.2 had demanded any amount from respondent No.2. He further states that the C.C.T.V. footage recovered from the spot does not support the allegations levelled by respondent No.2 in the F.I.R. He then referred to a communication dated 30.06.2023, issued by Superintendent of Police A.C.B., Nashik Region, Nashik to the Director General, Anti Corruption Bureau Maharashtra State Mumbai issued in relation to complaint against the Dy. S. P. who had dealt with the matter. He draws our attention to the said communication to point out that with respect to the demand panchnama dated 8.06.2022 it was found that panch No.2 Avinash Patil had not gone to the spot i.e. Tahsil office along with respondent No.2. The communication states that presence of panch No.1 is falsified by the CCTV footage which does not show his presence at the spot. According to the report, both the panchas had stayed at Government Rest House, Dhule on 08.06.2022. The report also refers to the visitor register in which entry of panch

Avinash Patil is not found. The report by Superintendent of Police states that in the verification panchnama dated 08.06.2022, the inquiry officer had taken signatures of both panchas on 13.06.2022 although they were not present. The learned Senior Advocate, therefore, submits that the demand panchnama is of no use to the prosecution and unless there is some material to support the allegations regarding demand, the prosecution cannot be allowed to be proceeded further. He also drew our attention to the report, wherein by making reference to CCTV footage it is stated that there is nothing to indicate that applicant No.1 had made any signal with his hands to the other accused thereby indicating him to talk to respondent No.2 about to ask him to demand bribe. Likewise, it is further stated that the script of panchnama also does not indicate that there was any conversation between the applicant and respondent No.2 complainant regarding demand of money. The report also reveals that the applicant had already completed formalities with respect to the file with respect to which allegation is levelled. In view of the aforesaid, the learned Senior Advocate submits that the prosecution case cannot stand scrutiny even if the entire material is accepted to be true and correct and as such the F.I.R against the applicant should be quashed.

6. Per contra, Mrs. R. P. Gour learned A.P.P. also refers to the report to point out that a discrete inquiry has revealed that the applicant used to accept illegal gratification and bribe regularly through accused No.2 Sandeep Musale. She then states that the report further suggests the involvement of the applicant from the circumstances at the relevant time i.e. the file of respondent No.2 was lying on the table of the applicant when she had gone to meet her, discussion between the applicant and respondent No.2 during the course of which accused No.2 was intervening regularly and accused No.2 calling respondent No.2 to meet her outside the chamber which was not objected to by the applicant. These circumstances according to the learned A.P.P. gives clear indication of demand by the applicant. She points out the report on which the learned Senior Advocate has relied which also indicates that there were reasons to suspect that accused No.2 was demanding money on behalf of the applicant. As regards the contention of the learned Senior Advocate that the script of demand does not indicate that the applicant had demanded amount from respondent No.2 she retorts that it is not even the case of prosecution that the amount was directly demanded by the applicant. She points out that the demand

was made by accused No.2 on behalf of the applicant.

7. We have heard the rival submissions of the parties and also perused the record of the case with assistance of the both the learned Advocates. It is now very well settled that in cases with respect to demand of illegal gratification, the demand has to be proved by the prosecution. Even if the money is actually given and accepted, public servant cannot be convicted for accepting illegal gratification unless the demand for the same is proved. At this stage, the prosecution must be armed with sufficient material which can take the shape of legally admissible evidence during the course of trial. At the present stage the test will be as to whether the material on record if unchallenged, will be enough to drive home the allegations. With these considerations we proceed to deal with the material on record.

8. The material on record indicates that respondent No.2 had visited the chamber of the applicant on 08.06.2022 in relation to work of conversion of land. The allegation is that accused No.2 had asked respondent No.2 to meet her outside the chamber of the applicant where he raised a demand of Rs. 35,000/- on behalf of the applicant and ultimately settled at

Rs. 25,000/-. The prosecution case is that respondent No.2 had accompanied by panch witness Shri. Avinash Patil. However, the communication by Superintendent of Police Anti Corruption Bureau to Director General of Police (A.C.B.) clearly records that the said panch witness had never accompanied the respondent No.2 at the time of demand. The report clearly states that although both the panch witnesses were not present at the time of alleged demand, the Investigating Officer had obtained their signatures subsequently. The report indicates that the Investigating Officer has prepared a false panchnama. The panchnama with respect to demand has thus lost all credibility. Since the material on the basis of which the demand is to be proved i.e. the panchnama, stands completely dislodged, it is obvious that there is no material to establish that demand was made by the applicants. In the absence of material to indicate the demand, prosecution against the applicants cannot be sustained. Proceeding with the matter against the applicant in the backdrop of undisputed facts emerging from the record would be an exercise in futility. No fruitful purpose will be served by making the applicants to face the criminal prosecution when the panchnama regarding demand has lost credibility in its entirety. It is apparent from the document of respondent No.1 itself that

false panchnama was prepared with respect to the demand. In view of the aforesaid, we are of the considered opinion that the F.I.R. needs to be quashed against the applicant. Hence, the following order :-

ORDER

- (I) The application is allowed.
- (II) The First Information Report vide Crime No. 0155 of 2022, registered with Pimpalner Police Station, Taluka Sakhri, District Dhule dated 24.06.2022 for the offences punishable under Sections 7(a) and 12 of the Prevention of Corruption Act is hereby quashed and set aside against applicant Vinayak S/o Sakharam Thavil.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni