



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3033 OF 2023

Sambhaji S/o Raghunath Ghuge,
Age-43 years, Occu:Service / Talathi,
R/o-Jambhulwadi, Tq-Kandhar,
Dist-Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Nanded,
Taluka and District-Nanded,
- 2) Vithal Kondaji Kshirsagar,
Age-73 years, R/o-Kalhal,
Taluka and District-Nanded,
Current Residence:N.D. 32/7/5,
Hudco, New Nanded,
Taluka and District-Nanded.

...RESPONDENTS

...
Mr. V.D. Salunke Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent No.1 – State.
Mr. Joslyn A. Menzes Advocate for Respondent
No.2 (Appointed).
...

CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE OF RESERVING ORDER : 27th JANUARY 2025

DATE OF PRONOUNCING ORDER : 6th MARCH 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed under Section 482 of the Code of Criminal Procedure for quashing the charge-sheet No.49 of 2023 pending before the learned Special Judge under the Prevention of Corruption Act, Nanded, arising out of the First Information Report (for short "the FIR") vide Crime No.371 of 2022 registered with Nanded Gramin Police Station, Nanded, for the offence punishable under Sections 7, 7(a) and 12 of the Prevention of Corruption Act.

2. Heard learned Advocate Mr. V.D. Salunke for applicant, learned APP Mr. A.M. Phule, for respondent No.1 and learned Advocate Mr. Joslyn A. Menzes appointed to represent respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that even if we consider the contents of the FIR as well as the charge-sheet, it can be seen that the offence is not made out against the present applicant. The applicant was serving as Talathi at Talathi Sajja Markand. Respondent No.2 filed the FIR on 20th June 2022 contending that he had given all the documents for mutation as he had decided to effect partition

between he himself, his two sons and wife. The application was then submitted along with documents to the applicant in March 2022, however, no action was immediately taken. He made inquiry after ten days to applicant. At that time he had made demand of Rs.25,000/-. When it was realized by the informant that his work will not be done, he gave amount of Rs.15,000/-. The work regarding 7 X 12 extract was still pending and when inquiry in that respect has made, the applicant has demanded remaining amount of Rs.10,000/-. Informant says that he was not ready to give the bribe and therefore, he made complaint on 16th June 2022 to the office of the Anti Corruption Bureau. Thereafter the verification was done and then he stated that a private person came in picture on behalf of the applicant. The dialogues between the private person and the complainant have been recorded. Trap was arranged. Even the dialogue between the applicant, informant and the third person has also been recorded and on the say of the applicant, the amount is stated to have been received by the private person i.e. accused No.2.

4. Learned Advocate for the applicant submits that if the documents are perused then the work of sanction of the mutation was not assigned or not within the jurisdiction of the applicant who was serving as Talathi. The document has been

seized, which is mutation entry No.733. It says that the application for mutation was made on 9th March 2022 and the mutation was recorded on 16th June 2022 by the Circle Officer. Prior to that notice was issued to the concerned persons on 15th May 2022. If the mutation was already made and served on 16th June 2022, there was no question of demand of the amount. Further, learned Advocate for the applicant has taken us through the verification panchnama, wherein the conversation between the complainant, applicant and co-accused Balaji has been recorded. It states that there was absolutely no demand from the applicant. It also appears from the complaint itself that on 17th June 2022 when the trap was laid and complainant went along with Panch No.1 to the office of Talathi, co-accused Balaji was present and Balaji told that the applicant was busy in a meeting and may not come to the office. Then accused Balaji gave two 7 X 12 extract prints from the computer to the complainant and then the complainant had asked Balaji as to how much amount he should pay. Balaji told him that it is as per his wish. Therefore, that dialogue was between the complainant and Balaji and applicant has no knowledge about it. It would be a futile exercise if the applicant is asked to face the trial on the basis of such evidence.

5 Per contra, the learned APP as well as the learned Advocate appointed to represent the cause of respondent No.2, have strongly objected the application and submitted that now every evidence is before the learned trial Judge. Even sanction has been accorded by the competent authority and therefore, let the trial be held.

6. At the outset, we would say that we are constrained to consider only the documents which are forming part of the charge-sheet. The written complaint which the complainant had given on 16th June 2022 to the office of Anti Corruption Bureau would show that he had given the application for recording the partition in respect of agricultural land, between him, his two sons and wife, in March 2022. He has not stated about the date. The copy of the partition deed executed on Bond Paper of Rs.100/- would show that it was executed on 23rd March 2022. Then Exhibit-C, which is filed by the present applicant, which is also bearing the signatures of Panchas, investigating officer, would show that it appears to be the notice in respect of mutation entry No.733. It is as per Form No.9 (Rule 14 and 24), Section 150 (2) of the Maharashtra Land Revenue Code. It is then stated that date of information that is received is 9th March

2022 and date of mutation is 21st March 2022 (It is written as, नोंदीचा प्रकार : इतर फेरफार फेरफाराचा दिनांक : 21/03/2022, माहीती मिळालेचा दिनांक : 09/03/2022). The notice is issued on 21st March 2022. We are unable to get to whom this notice was given. But at the end there is name of the complainant and certainly it was issued by the present applicant as his name is mentioned and there is his signature stating that in the capacity of Talathi he is giving intimation that within fifteen days from the receipt of the said intimation, objection can be raised.

7. Now, at the time of arguments, learned Advocate for the applicant has tendered *Gav Namuna 6, Ferfar Nondwahi (Ferfar Patrak)* [गाव नमुना ६, फेरफार नोंदवही (फेरफार पत्रक)], wherein it was stated that notice was served on 15th May 2022. The notice which was issued on 21st March 2022 from the same village whether can be received on 15th May 2022, would be a question. Further, when in the notice dated 21st March 2022 there is a mention of Rs.100/- Bond paper, then it will have to be again considered that the document which has been seized i.e. Rs.100/- Bond paper was executed on 23rd March 2022. Therefore, it would be a disputed question as to exactly when the application for change in the mutation was made and how

the procedure has gone or taken from the office of Talathi to the office of Circle Officer.

8. The other evidence on record would show that there is a verification. Even the present applicant has been involved. That conversation was recorded on 16th June 2022, wherein it is stated that the present applicant told that 7 X 12 extract will be prepared till the evening of that day. That means the work was not complete, as it appears prima facie. There is evidence of acceptance of tainted money by co-accused Balaji. The competent authority has accorded sanction to prosecute and therefore, this is not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure as it relates to disputed questions of facts.

9. The Application stands rejected.

10. The fees of learned Advocate Mr. Joslyn A. Menzes, appointed to represent respondent No.2, is quantified at Rs.7000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

asb/MAR25

[SMT. VIBHA KANKANWADI]
JUDGE