AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.285 OF 2025

Manor Himanshu Mishra … Applicant
V/s.
Union of India & Anr. … Respondents

Mr. Rangan Majumdar with Mr. Sandeep Raman and Mr. Tanay Mandot for the applicant.

Mr. D.P. Singh for respondent No.1-Union of India.

Mr. Amit Munde with Mr. Jai Vohra for respondent No.2-CBI-ACB (Mumbai).

Mr. Sagar R. Agarkar, APP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON SEPTEMBER 16, 2025

PRONOUNCED ON : SEPTEMBER 18, 2025

P.C.:

1. The applicant has preferred the present revision application challenging the impugned order dated 15th April 2025 passed in Special Case No.189 of 2023, whereby the learned trial court rejected the applicant's application for discharge in respect of the offence punishable under Section 7 of the Prevention of Corruption Act and Section 120B of the Indian Penal Code.

2. According to the prosecution, the complainant, Shri Tushar Anantrao Desale, is a civil contractor. For the last two to three years, he was working as a sub-contractor with a construction company named M/s. Nikaash Infracon. While working on the project of Half DASC Platoon site of Military Engineering Services (MES), Nashik Road Camp, Nashik, on behalf of M/s. Nikaash Infracon, he was called by Shri Himanshu Mishra, AGE, and Shri Milind Wadile, JE. They told him that he had to pay a bribe of 2% of the total Running Account Receipt (RAR) bill of Rs.22.85 lakh to each of them. Two percent of the said bill came to Rs.45,700/-. Thus, he was required to pay a total amount of around Rs.90,000/- to both officers. He further stated that Shri Himanshu Mishra and Shri Milind Wadile forced him to pay Rs.30,000/- and Rs.20,000/- respectively towards their 2% share out of the aforesaid amount of Rs.90,000/-. When he failed to meet the demand for the remaining bribe, his work on the second floor was deliberately stopped by Shri Himanshu Mishra and Shri Milind Wadile by raising objections in construction. Since the complainant was not willing to pay the bribe, he lodged a complaint on 27th September 2022 before the Superintendent of Police, CBI, ACB, Mumbai, seeking necessary legal action.

3. In pursuance of the complaint, on 28th September 2022, the complainant, accompanied by a panch witness at a safe but visible distance, went to the office of Shri Milind Wadile, Junior Engineer, and discussed the issue of his stopped work. During this discussion, Shri Milind Wadile asked him to submit all the bills. In the conversation, Shri Milind Wadile admitted that he had already received Rs.20,000/- as bribe and further demanded a lumpsum amount towards bribe for clearing the pending bills. This conversation was recorded on an SD card inserted in a DVR in possession of the complainant. The recorded conversation confirmed the acceptance of Rs.20,000/- by Shri Milind Wadile and also showed his attempt to demand more bribe for processing future RAR bills of the complainant.

4. Further, on 11th October 2022, the complainant, with a panch witness at a safe but visible distance, went to the office of Shri Himanshu Mishra, AGE. Shri Himanshu Mishra informed him that his recent RARs had been cleared and demanded the remaining Rs.15,000/- out of Rs.45,000/- earlier agreed. He further demanded Rs.16,000/- as his share of commission for adjustment of Rs.81,000/-, and also sought another amount as commission for the recently cleared RAR of Rs.11,00,000/-. Thereafter, the complainant went to the cabin of Shri Milind Wadile, JE, who again instructed him to bring the entire amount as demanded by Shri Himanshu Mishra without fail. A DVR with SD card was again placed with the complainant. However, due to some technical glitch, the said conversation could not be recorded.

5. On these facts, it was alleged that Shri Himanshu Mishra, AGE, and Shri Milind Wadile, JE, both posted at MES, Nashik Road, demanded and accepted illegal gratification as a reward for processing RAR bills. A case vide RC-BA1-2002-A-0018 dated 12th October 2022 came to be registered by CBI, ACB, Mumbai against Shri Milind Wadile, JE, MES, Nashik and unknown others for offences punishable under Section 7 of the Prevention of Corruption (Amendment) Act, 2018.

6. Learned Advocate for the applicant submitted that the trial court has failed to consider the absence of any material to show meeting of minds under Section 120B IPC. He argued that the prosecution has not established demand by the applicant. In the transcript relied upon by the prosecution, there is no specific demand made by the applicant. At best, accused No.2 is heard discussing finishing of work. He further submitted that the sanction under Section 19 of the P.C. Act was placed on record one year and eight months after filing of the charge-sheet, which is beyond the prescribed time. He pointed out that there is no sanction under Section 197 of the Code of Criminal Procedure, 1973, and yet the Special Judge erroneously treated the sanction as a deemed sanction. The sanction order is silent regarding Section 197 Cr.P.C. and, therefore, the finding of deemed sanction is unsustainable.

7. On the other hand, learned Advocate for the prosecution submitted that the presumption under the P.C. Act applies and hence the applicant cannot be discharged at this stage. He submitted that the trap was conducted in the presence of independent panch witnesses and the post-trap panchnama confirms the demand and acceptance of bribe by the accused. He argued that both accused demanding 2% of the RAR bills shows clear meeting of minds and conspiracy. He further submitted that the post-trap panchnama shows that the applicant acknowledged the bifurcation of Rs.38,000/- out of the undue advantage of Rs.53,000/-, which clearly indicates conspiracy with the co-accused. The demand was not for official work but as a reward for clearing RAR bills, and therefore sanction under Section 197 Cr.P.C. is not applicable. He pointed out that the sanction order under Section 19 of the P.C. Act also covers other offences and, thus, amounts to sanction under Section 197 Cr.P.C. Relying on the judgment in Vijay Raj Mohan v. State through CBI, SLP (Crl.) No.1568 of 2022, he submitted that delay in granting sanction cannot be a ground for discharge. He contended that the material on record satisfies the ingredients of Section 7 of the P.C. Act and Section 120B IPC, and therefore, the Special Court rightly rejected the discharge application.

8. I have considered the submissions advanced on behalf of the applicant and the prosecution. I have also perused the charge-sheet, documents placed on record, and the impugned order. The main grounds raised by the applicant are: (i) absence of material to establish conspiracy under Section 120B IPC, (ii) absence of specific demand made by the applicant, (iii) delay in sanction under Section 19 of the P.C. Act, and (iv) absence of sanction under Section 197 Cr.P.C.

9. The first issue which requires consideration is whether there exists prima facie material to establish conspiracy under Section 120B of the Indian Penal Code. It is a settled principle of law that for proving a charge of conspiracy, direct evidence of agreement or meeting of minds is seldom available. The offence of conspiracy is usually established through circumstances which demonstrate concerted action and a common design between the accused.

10. The Supreme Court in *Kehar Singh v. State (Delhi Administration)*, (1988) 3 SCC 609, has held that conspiracy is generally hatched in secrecy, and therefore, proof of conspiracy is usually inferred from the conduct of the parties, their actions, and the circumstances in which such actions took place. It is not necessary to prove an express agreement between the conspirators. What is required is the existence of circumstances that lead to the conclusion that the accused persons were acting together with a common purpose.

11. In the present case, the complainant has consistently alleged that both the accused, namely, Shri Himanshu Mishra and Shri Milind Wadile, demanded 2% commission on the Running Account Receipt (RAR) bills. This allegation is not in isolation. It is corroborated by the contents of the complaint dated 27th September 2022, the recorded conversation dated 28th September 2022, and the subsequent conduct of both accused during the trap. The post-trap panchnama specifically records the discussion regarding bifurcation of the undue advantage amount between both accused.

12. This evidence, taken together, shows that the demand was not by one accused alone but was being made in a concerted manner by both. The fact that the percentage of commission demanded was uniform, and the fact that the accused were instructing the complainant to bring the entire amount without fail, are circumstances that point towards a prior arrangement and understanding between them.

13. It is also well settled that at the stage of framing charge or considering discharge, the Court is not required to meticulously weigh the evidence as is done during trial. The Court has only to see whether there exists sufficient ground to proceed further. The Supreme Court in *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39, has observed that strong suspicion founded on material placed before the Court is sufficient to frame charge.

14. Applying these principles to the facts of the present case, the allegations of demand of 2% commission by both accused, the recorded conversation, and the post-trap panchnama are sufficient to create a strong suspicion of conspiracy. The circumstances prima facie establish that both accused were acting in concert with a common object of extracting illegal gratification.

15. Therefore, at this stage, it cannot be said that there is no material to frame charge under Section 120B IPC. On the contrary, the material on record provides a sufficient foundation for proceeding against the accused for the said offence.

16. The second issue which arises is regarding the requirement of proving demand of illegal gratification. The law is settled that demand is the foundation of an offence under Section 7 of the Prevention of Corruption Act. Unless there is proof of demand, mere possession or recovery of tainted money from an accused cannot by itself establish the offence.

17. The demand of illegal gratification is sine qua non for an offence under Section 7. The complainant has clearly stated in his complaint dated 27th September 2022 that both accused demanded 2% commission on RAR bills. This version is supported by the recorded conversation of 28th September 2022, where accused No.2, Shri Milind Wadile, acknowledged having received

Rs.20,000/- and further demanded lumpsum payment for clearing pending bills. The fact of receipt of Rs.20,000/- has thus been admitted in the conversation itself. Further, the post-trap panchnama records that there was discussion on bifurcation of undue advantage amount between both accused. This corroborates the prosecution version that not only was money demanded earlier, but that the accused continued to insist upon the balance amount during the trap proceedings.

18. At the stage of considering discharge, the Court is not required to test whether this material will ultimately prove guilt beyond reasonable doubt. The test is whether there is sufficient ground to proceed. The Supreme Court in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, has held that at the stage of charge, the Court is only to see if there is strong suspicion against the accused based on the material placed on record.

19. In the present case, the complainant's statement, the transcript of the recorded conversation, and the post-trap panchnama together prima facie establish that there was a demand and partial acceptance of illegal gratification. Whether the prosecution ultimately succeeds in proving demand and acceptance beyond reasonable doubt is a matter of trial. At this preliminary stage, the material cannot be brushed aside.

20. Therefore, there exists prima facie evidence of demand of illegal gratification by the accused, sufficient for proceeding under Section 7 of the Prevention of Corruption Act.

21. The third issue for consideration is regarding the validity of sanction under Section 19 of the Prevention of Corruption Act. The objection of the applicant is that the sanction was placed on record one year and eight months after filing of the charge-sheet, and therefore the proceedings are vitiated.

22. In *Vijay Raj Mohan v. State through CBI* (SLP (Crl.) No.1568 of 2022), the Supreme Court has held that mere delay in granting sanction cannot be a ground to discharge an accused. What is required is that the sanctioning authority should have considered the relevant material and applied its mind. The Court further observed that sanction being an administrative act, it can be produced even at a later stage, and so long as the sanction shows due consideration, the prosecution cannot be quashed on the ground of delay alone.

23. In the present case, the sanction order under Section 19 of the P.C. Act has been placed on record. A perusal of the sanction order shows that the competent authority has considered the relevant facts, documents, and allegations before granting sanction. The order is not mechanical in nature but reflects due application of mind. Therefore, the contention that the sanction is invalid merely because it was placed on record after one year and eight months cannot be accepted.

24. It is also significant to note that Section 19(3) of the P.C. Act specifically provides that any error, omission, or irregularity in sanction shall not affect the validity of the proceedings unless it has caused failure of justice. The applicant has not shown how delay in placing sanction on record has resulted in any prejudice or failure of justice.

25. Hence, in view of the sanction order being valid on merits and showing application of mind, the ground of delay in placing sanction on record cannot be accepted as a ground for discharge.

26. The fourth issue raised by the applicant is that there is no sanction under Section 197 of the Code of Criminal Procedure, 1973, and therefore the prosecution is not maintainable. The applicant contends that in the absence of such sanction, the trial cannot proceed.

27. It is important to note the scope of Section 197 Cr.P.C. The provision protects a public servant from prosecution for any act done by him in discharge of his official duties. The object of the section is to ensure that honest officials are not deterred from performing their duties out of fear of vexatious litigation. At the same time, the protection is not meant to cover acts which are ex facie criminal and have no nexus with discharge of official duty.

28. In the present case, the allegation is that the accused demanded and accepted illegal gratification as a reward for clearing RAR bills. Such conduct is wholly alien to the discharge of any lawful duty by a public servant. On the contrary, it is an abuse of official position. Therefore, the protection under Section 197 Cr.P.C. cannot be invoked by the applicant.

29. It is further seen from the record that the competent authority has granted sanction under Section 19 of the Prevention of Corruption Act. The sanction order also records that it covers any other offences arising out of the acts complained of. Once a valid sanction under Section 19 P.C. Act is in place, there is no requirement for a separate sanction under Section 197 Cr.P.C. for the same set of acts.

30. The learned Advocate for the applicant has placed reliance on the decision of the Hon'ble Supreme Court in *A. Sreenivasa Reddy v. Rakesh Sharma*, (2023) 8 SCC 711, to contend that compliance with Section 197 of the Code of Criminal Procedure is mandatory and, in its absence, the prosecution is not maintainable.

31. I have carefully considered the said judgment. In *A. Sreenivasa Reddy* (supra), the Supreme Court dealt with the scope of Section 197 Cr.P.C. and held that when the act complained of has a reasonable nexus with the discharge of official duty, the protection under Section 197 Cr.P.C. is attracted, and sanction is necessary before the Court can take cognizance. The principle emphasized is that no public servant should face prosecution for acts done in good faith while discharging his duties, without the prior sanction of the competent authority.

32. However, the same judgment also clarifies that if the act complained of is wholly unrelated to the official duty, or if it is a case where the act itself constitutes a criminal offence unconnected with any lawful duty, then Section 197 Cr.P.C. has no application. The Court in *A. Sreenivasa Reddy* reaffirmed that the test is whether the act has a direct nexus with the discharge of official duty.

33. Applying this test to the present case, the allegations are of demand and acceptance of bribe as a reward for clearing Running Account Receipt (RAR) bills. Such an act can never be treated as part of the official duty of a public servant. On the contrary, it is an act in abuse of official position and in complete violation of the duties of a public servant.

34. Thus, while the principle laid down in *A. Sreenivasa Reddy* is well settled, its application depends on the nature of the act complained of. In the present case, the act alleged against the applicant and co-accused is the demand and acceptance of illegal gratification, which falls outside the protective ambit of Section 197 Cr.P.C. Therefore, the reliance placed by the applicant on *A. Sreenivasa Reddy* (supra) does not advance his case.

35. Thus, the contention of the applicant that proceedings are vitiated for want of sanction under Section 197 Cr.P.C. is without merit. The law is clear that no such sanction is necessary when the allegations relate to demand and acceptance of bribe, and in any case, the sanction under Section 19 of the P.C. Act is sufficient to sustain the prosecution.

36. Accordingly, the objection raised by the applicant on this count does not hold ground.

37. In view of the discussion made above on all the issues, it is clear that the prosecution has placed prima facie material on record showing demand and acceptance of illegal gratification and the concerted action of both accused. The sanction under Section 19 of the Prevention of Corruption Act is valid and reflects due application of mind. The protection under Section 197 of the Code of Criminal Procedure is not attracted in cases of demand and acceptance of bribe.

38. At this stage, the Court is not expected to evaluate the evidence in detail as is done at the time of trial. The test is only to see whether there exists sufficient ground to proceed further. The material on record, including the complaint, the recorded conversation, and the post-trap panchnama, prima facie disclose the ingredients of the offence under Section 7 of the Prevention of Corruption Act and Section 120B of the Indian Penal Code.

39. The grounds urged by the applicant pertain to appreciation of evidence, which is a matter to be tested during trial. They cannot be a ground to discharge the applicant at this stage. The learned Special Judge has rightly rejected the discharge application by a reasoned order.

40. I find no perversity, illegality, or material irregularity in the impugned order warranting interference in revisional jurisdiction.

41. Hence, the Revision Application is devoid of merit and stands dismissed.

(AMIT BORKAR, J.)