



Judgment

455 apl246.23

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.246 OF 2023

Sanjay s/o Laxman Kholapurkar,
aged about 62 years, occupation retired,
r/o 77-B, Pande Layout, behind Water
Tank, Khamla, Nagpur. **Applicant.**

:: VERSUS ::

State of Maharashtra,
thr.Superintendent of Police,
Anti-Corruption Bureau, Nagpur. **Non-applicant.**

Shri Sahil Dewani, Counsel for the Applicant.
**Shri Anant Ghongre, Additional Public Prosecutor for the
State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 08/07/2025

PRONOUNCED ON : 02/09/2025

JUDGMENT

1. By this application, the applicant has invoked
provision under Section 482 of the CrPC and claimed
following reliefs:

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“(a) quash and set aside the impugned order dated 30/04/2021 (Annex-Y) rejecting the application for discharge of Applicant Accused No.2, passed by the Learned Special Judge, (ACB), Nagpur, in Special Case No.26/2018, (which is the outcome of the investigation in Crime No.204/2017 registered with Sadar Police Station, Nagpur and which was investigated by Anti-Corruption Bureau, Nagpur, for the offence punishable under Section 13(10(c), 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 420, 109 of Indian Penal Code and order for discharging of the applicant in the peculiar facts and circumstances of the present case and in the interest of justice;

(b) Invoke inherent and superintending powers of the Honourable Court to quash and set aside the

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aforesaid prosecution and all the consequential acts, in the circumstances brought to the kind notice of the Honourable Court;

(c) Stay the said Special Case No.26/2018 pending on the files of Learned Special Judge, (ACB), Nagpur, during the pendency of the decision in the present matter and/or direct the said learned judge to no to frame charge against the applicant, in the peculiar facts and circumstances of the case and in the interest of justice;

(d) Grant ad interim relief in terms of prayer clause (b);

(c) And be further pleased to grant such other relief pass such other order as this Honourable Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.”

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2. Brief facts necessary for disposal of the application are as under:

The applicant was working as the Superintending Engineer in Irrigation Department and was Incharge of Gosikhurd Project of Vidarbha Irrigation Development Corporation (VIDC), Water Resources Department, Nagpur and obtained Voluntary Retirement in the year 2013. He was charged for offences under Sections 13(1)(c), 13(1)(d), and 13(2) of the Prevention of Corruption Act (the P.C.Act) and 420 and 109 of the IPC. The VIDC is entrusted with the job of Irrigation Project in Vidarbha. In view of directions issued in PILs by this court bearing Nos.83 and 92/2012 whereby irregularities were pointed in the irrigation projects and after filing of the said PILs, the State Government has decided to investigate the matter in detail. Accordingly, the Department of Home Ministry

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has passed an order for enquiry through the Anti Corruption Bureau. During the enquiry, it revealed that the applicant was entrusted with the job of working on the said project and was found to be involved in the act of increasing the project/tender cost. During the investigation, it was found that contrary to the Rules and Regulations, the tenders were called by making the illegal changes and project cost was also increased without following due procedure of law. It was found that the applicant was involved in the act of increasing the project/tender cost by providing the advance to the contractor contrary to the provisions of notice and tender. On the basis of illegal proposal, the amount was sanctioned. There was no provision for pre-bid conference even then M/s.Hindustan Construction Company was proposed to be given the amount of Rs.10.49 crores towards the advance because of which fair tendering

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process could not be done and illegal amount and contract was awarded contrary to the provisions of law. It was further revealed that successful bidder Hindustan Construction wrote letter dated 2.2.2007 demanding 10% of mobilization advance towards the Executive Engineer and Executive Engineer by virtue of letter No.283/NL/07 dated 5.2.2007 recommended that the advance can be given. On the basis of the said proposal passed by the applicant, the amount was disbursed to the contractor to the tune of Rs.10,49,00,000/-.

3. During the investigation, the authorities requested the Expert Committee to give opinion and the opinion is received from the Expert Committee that there was no provision in tender and there was no legal demand. On the contrary, the said demand was rejected. The proposal was forwarded for providing the mobilization advance

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which is contrary to the provisions of Sections 193(4) and 233 of Rules made available for Maharashtra Sarvajanic Bandhkam Vibhag. The proposal letter of providing illegal advance was signed by the applicant contrary to the provisions of law. Resultantly, illegal flow of money was generated and thereby caused loss to the Government. The opinion was also sought from the Technical Expert Committee and the Committee has given an opinion that only some project cost/tender cost can be increased and those are 1). cost of increased; 2). cost of cement and steel, and 3). change in proposed cost of project increased in requirement of sand and other natural items required for canal. The Technical Expert Committee has given opinion that apart from this there are no other valid grounds for increasing the costs project and tender and the said irregularities were caused because of the illegal act of Executive Engineer, Superintending Engineer and the

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Executive Director to favour the contractor to put loss to the Government of Rs.781.39 crores. On the basis of the said allegations, the crime was registered vide Crime No.204/2017. After investigation, the chargesheet was filed bearing Special Case No.26/2018.

4. After filing of the chargesheet, the applicant has filed an application for discharge which came to be allowed by learned Additional Sessions Judge by order dated 25.10.2018.

5. Being aggrieved and dissatisfied with the same, the State has preferred an application under Section 482 and challenged the order passed by learned Additional Sessions Judge, Nagpur. This court has allowed the said application and observed that learned Additional Sessions Judge has not considered the other contentions in support of the discharge application and wrongly assumed that

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previous approval is required and directed learned Additional Sessions Judge to decide the discharge application of the accused afresh and record finding *qua* contention that the material on record is not sufficient to warrant a trial. As per the directions of this court, the applicant approached learned Special Judge by filing an application below Exh.47 and rejected the application by passing order on 30.4.2021.

6. Being aggrieved and dissatisfied with the same, the present application is filed on following grounds:

1. the chargesheet was filed on 31.7.2018 in contravention of the amended provisions of the P.C.Act, 1988. The amendment to Section 17(a) of the PC Act came in force from 26.7.2018 which contemplates that enquiry or investigation of the offence related to the recommendations made or

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decision taken by the public servant in discharge of his official functions or duties mandate;

2. Learned Special Judge has not considered that final report as filed by the then prisoner is contrary to the provisions of the P.C.Act and the Maharashtra Civil Services (Pension) Rules. Learned Sessions Judge has also not considered the role of the applicant in the entire tender process was only that of recommending authority and decision making process was with the higher authorities.

3. The applicant is made accused in the present matter merely on the basis of suspicion and there is no material on record to show that the applicant is beneficiary from any misappropriation as alleged by the prosecution.

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4. The applicant during the pendency also filed an application under Section 91 of the Code along with the documents in order to substantiate that even on the similar charges the departmental enquiry was conducted by the independent enquiry by Secretary and Special Enquiry Officer (II) and General Administrative Department, who is an officer from IAS Cadre and after completion of the said enquiry and on the report filed by them, the government has exonerated from the said charges.

7. Heard learned counsel Shri Sahil Dewani for the applicant, who submitted that burden as to provisions of Section 13(1)(d) and 13(2) of the PC Act is only on the part of the prosecution to prove that there was demand of illegal gratification by public servant in respect of showing

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favour or disfavour in respect of official act and he in fact received or obtained money as bribe by corruption or abusing his position as a public servant. The legal provisions are no more *res integra* that the primary requirement for establishing an offence under Section 13(1)(d) of the P.C.Act is proof of demand for a valuable thing or pecuniary advantage by the public servant. There is no material in the final report as would be sufficient to infer the commission of the act making an offence or criminal misconduct by a public servant. The prosecution has to place evidence to demonstrate that the public has obtained amount or for any other person any valuable thing or pecuniary advantage either by abusing his position as a public servant or by corrupt or illegal means. The applicant is already exonerated in the departmental enquiry from the said charges. The proof required to prove the criminal offence is more heavier

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than the proof required in the departmental enquiry. As the applicant is already exonerated from the departmental enquiry, there would be no prosecution against him and, therefore, he be discharged by setting aside the order passed by the Special Judge.

8. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. C.Chenga Reddy and ors vs. State of A.P, reported in (1996)10 SCC 193;
2. Abdulla Mohammed Pagarkar vs. State, reported in (1980)3 SCC 110;
3. State of Madhya Pradesh vs. Sheetla Sahai and ors, reported in (2009)8 Scc 617;
4. Rishipal Singh vs. State of Uttar Pradesh and anr, reported in (2014)7 SCC 215;

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5. Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and anr, reported in (2020)9 SCC 636;

6. Thermax Limited and ors vs. K.M.Johny and ors, reported in (2011)11 SCC 412;

7. Vikram Johar vs. State of Uttar Pradesh and anr, reported in (2019)14 SCC 207;

8. Criminal Revision NO.25/2019 (Sunil Shinde vs. State of Maharashtra) decided on 20.2.2019;

9. Criminal Revision Application No.141/2019 (Sanjay Laxman Kolhapurkar vs. State of Maharashtra) decided by this court on 16.9.2021;

10. Criminal Application No.734/2020 (Keshav Chandrakant Tayde vs. State of Maharashtra) decided by this court on 26.6.2022;

11. Criminal Revision Application No.129/2021 (Devendra Parshuram Shirke vs. State of Maharashtra) decided by this court on 23.12.2021;

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12. Criminal Application (APL) No.1371/2021 (Sanjay Laxman Kholapurkar vs. State of Maharashtra), decided by this court on 9.11.2022.

He submitted that in **Criminal Application No.734/2020** and **Criminal Revision Application No.141/2019** in the similar types of offences the applicant and other co-accused are discharged.

9. *Per contra*, learned Additional Public Prosecutor Shri Anant Ghongre for the State strongly opposed the application and submitted that during investigation the involvement of the applicant revealed in granting favour to the contractor. It was found that the present applicant was not only involved in the act of increasing the project/tender cost but also sanctioned advance contrary to the provisions of notice and tender. On the basis of the

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illegal proposal, the amount was sanctioned and the applicant was responsible for causing loss to the Government to the tune of Rs.781.39 crores. Thus, there is a *prima facie* material against the applicant and, therefore, no interference is called for.

10. Before entering into the merits of the case, it is necessary to see considerations for considering the application for discharge.

11. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

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12. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in MANU/SC/1113 2023, advertng to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa**, reported in (1996) 4 SCC 659 and **The State of MP Vs. Mohan Lal Soni**, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors**, (2014) 11 SCC 709

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adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting

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the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. Thus, at the stage of considering the application for discharge, the defence of the accused is not to be

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looked into. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination

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of the defence. The case of the prosecution is to be accepted as it is.

14. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.

(2) Where the materials placed before the Court disclose grave suspicion against the accused

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which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a

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mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

15. In the case of **Captain Manjit Singh Viridi (Retd.) vs. Hussain Mohammed Shattaf & Ors**, reported in **AIR 2023 SC 2480** the Hon’ble Apex Court reiterated the principles governing the application for discharge and observed that law on issue as to what is to be considered at the time of discharge of an accused is well settled. Truthfulness, sufficiency and acceptability of the material

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produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court.

16. Now, coming to the first ground raised by the applicant in the application, that chargesheet was filed on 31.7.2018 in contravention of the amended provisions of the P.C.Act and the same was in contravention of amended provision of the P.C.Act, it was canvassed that amendment of Section 17(a) came in force on 26.7.2018 which contemplates Inquiry or investigation of offences relating to recommendations made or decision taken by public servant in discharge of official functions or duties

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mandatorily requires prior approval. This ground was earlier raised before this court when the State challenged the order of discharge and this court by referring the said Section observed that Section 17(a) creates an embargo which precludes an enquiry and investigation. The embargo clearly applies only to such enquiry or investigation which is initiated after the coming into force of Section 17(a). Any other view, would do violence to the plain language of the statute and would be subversive of the legislative intent. The legislative intent is certainly not to set the clock back to invalidate investigation or enquiry which is undertaken, much less an investigation which is complete, prior to the coming into force of Section 17(a). While the legislative intent is to protect honest and responsible public servants where the allegation is relatable to the recommendations made or decisions taken in discharge of official functions or duties, Section

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17(a) must receive a reasonable interpretation, particularly, since the said provision fetters the right of the Investigating Agency to inquiry into a cognizable offence and is vulnerable to the challenge that the statutory scheme, inter alia section 155 of the Code, is dented. It is stated at the bar that the Supreme Court has issued notice in Special Leave Petition challenging the constitutional validity of Section 17(a).

17. By referring the decision in the case of **State of Telangana vs. Sri Managipeth @ Magnipeth Sarveshwar Reddy (Criminal Appeal 1662 of 2019)**, the Hon'ble Apex Court considered the submission that the amended provisions of the Act would be applicable as the chargesheet was submitted after the Amending Act come into force, and observed as follows:

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“37. Mr. Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in **M. Soundarajan v. State through the Deputy Superintendent of Police, Vigilance and Anti Corruption, Ramanathpuram** to contend that amended provisions of the Act as amended by Act XVI of 2018 would be applicable as the Amending Act came into force before filing of the chargesheet. We do not find any merit in the said argument. In the aforesaid case, the learned trial Court applied amended provisions in the Act which came into force on 26th July, 2018 and acquitted both the accused from charge under Section 13(1)(d) read with 13(2) of the Act. The High Court found that the order of the trial Court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. In the present case, the FIR was registered on 9th November, 2011 much before the Act was amended in the year 2018. Whether any offence

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has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26th July, 2018.”

18. In the light of the above observations, this court held that learned Judge below committed grave error in discharging the accused on the premise that Section 17(a) of the PC Act is attracted. The said provision has no applicability to enquiry or investigation undertaken prior to its coming into force. The protective cover is not available to acts done by using the offence as a cloak for unlawful gains. Considering the allegations, the accused are not protected by the requirement to seek previous approval, assuming *arguendo*, that the said provision comes into play and directed learned Judge below to decide discharge application.

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19. Thus, this court in earlier round of litigation has already considered applicability of Section 17(a) of the P.C.Act and held that protective cover is not available to acts done by using the offence as a cloak for unlawful gains. As the said order was not challenged by the applicant, it attained the finality and, therefore, now the said ground is not available to the applicant for discharge.

20. The second ground raised in the application is that there was no material available against the applicant as the role of the applicant in the enquiry/tender process was only to the extent of recommending the authority and decision making process was with the higher authorities.

21. Perusal of the entire investigation papers shows that the allegations against the applicant are not only to the extent of increasing the project/tender costs but also during investigation it was found that contrary to the

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rules and regulations tenders were called by making illegal changes and project costs was increased without following due process of law. The applicant was not only increasing the project costs but also recommending advance to the contrary to the provisions of the notice and tender. There was no provision for pre-bid conference even then M/s.Hindustan Construction Company was proposed to be given the amount of Rs.10.49 crores towards the advance because of which fair tendering process could not be done and illegal amount and contract was awarded contrary to the provisions of law. It was further revealed that successful bidder Hindustan Construction wrote letter dated 2.2.2007 demanding 10% of mobilization advance towards the Executive Engineer and Executive Engineer by virtue of letter No.283/NL/07 dated 5.2.2007 recommended that the advance can be given. On the basis of the said

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proposal passed by the applicant, the amount was disbursed to the contractor to the tune of Rs.10,49,00,000/-.

22. Record further shows that there was no cause to grant mobilization advance. However, the applicant has recommended the same and mobilization in advance was issued after recommendation of the letter issued by the applicant. The executive director in pursuance of the said letter accorded the sanction on 26.2.2007 and accordingly Rs.10,49,00,000/- advance was released in favour of the tenderer company. Admittedly, the said allegation is of serious nature. Besides that, the Wadneri Committee was constituted and in its report it is specifically observed that the tender cost was updated by 8.57% of the original tender cost. It prima facie in excess of 5% of the admissible limit and powers of the committee of the

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applicant and the co-accused. Although initial tender costs was Rs.91,17,50,936/- and the same was updated in the value of Rs.110,09,39,255/-.

23. Thus the said order *prima facie* suggests that there was misappropriation of Rs.781.39 crores in the said project. The said increase of the cost is against the guidelines framed while updating costs as per the GSR was not followed.

24. Para No.313 of the Public Works Manual of obtaining fresh sanction is contravened by the applicant along with the co-accused. Similarly, the provisions of para Nos.194 and 270 of the Maharashtra Public Works Manual are also contravened the applicant and the co-accused. The demand draft of money which were expected to be deposited by the company were also not deposited in the account of corporation. There is specific

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allegation that in view of the act on the part of the applicant the contractor company has received pecuniary advantage on the basis of approval given by the applicant in the capacity of Superintending Engineer i.e. member of scrutiny committee. As such, the allegations made in the chargesheet against the applicant are very specific that the updation of the tender cost was made illegally and the applicant along with the co-accused by incorporating inadmissible circumstances have updated the tender cost by 781.39 lacs and approved the same in his own wisdom along with the co-accused.

25. Third ground raised in the application for discharge is that he is exonerated from the departmental enquiry. As per the departmental enquiry, charges against the applicant were as follows:

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Charge No.1 : While framing the estimates for the works under Ghosikhurd Project, some provisions which were not provided under the concerned rules, were made resulting into the increase in the cost of the works. Similarly, while working out the updated estimated cost of the works, put to tender same wrong items were introduced, which were not the part of the original estimates, resulting into wrong updated cost of tender estimate. Also the wrongly valued at proposals for acceptance of higher updated of tender were submitted at senior level. This has resulted into increase in the cost of tenders and thereby increase in the cost of project works. He is responsible for the increase in cost.

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Charge No.2: Para 313 of the Maharashtra Public Workers Manual as below:

“Because of the rates of item in the earlier sanction estimates are found inadequate or because of any other reason, apart from the reason mention in the previous para, if there is likelihood of increase in estimate cost beyond 5%, then the revised estimate has to be submitted. Also comparative Statement (In form PS 119) and detailed report stating the progress of work and reason for improvement in estimate has to be submitted”.

Para 315 of the Maharashtra Public Workers Manual states as below under:

“Before taking up the work for which (estimate) is submitted 2 years prior, the Executive Engineer

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should take careful review and ascertain whether there is a need to change the rate or other aspect of the estimated and before calling the tender bids, estimate should be revised as per the current schedule of rates and in the charges in other aspect if felt necessary.”

After considering the provisions of para 313 and 315, together, while applying the tender if the cost is likely to increase than 5%, that it is necessary revised the estimate and the estimate should be approved at the competent level. However, while undertaking the works of Ghosikhurd Project, para No.313 and 315 of the Maharashtra Public Workers Manual was not followed.

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Charge No.3. : Para 194 of Maharashtra Public Workers Manual state as below:

“The work of which tender is accepted and agreement related paper work is completed in all respect, (but agreement is not signed/work order not received), needs to be taken up, in the interest of government, such work should be temporarily undertaken on A-2 type of agreement and when the main agreement is finalized the A-2 type agreement should be cancelled. It is beyond executive engineer's competency to sanction the main tender agreement and executive engineer is fully empowered to take up works on A-2 type agreement. Still the temporary agreement, before starting work should be sanctioned by the competent authority

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who has accepted the main tender. In such cases main agreement should be expedited without delay.”

on reviewing the above mentioned paragraph it is clear that from the date of acceptance of the tender by competent authority to execution of contract, the competent authority who accepts the tender should also sanction the agreement/contract on A-2 agreement, if it is necessary in the interest of the Government. However, in one case tender acceptance was in process, the work on A-2 agreement was sanctioned and in other nine cases a proposal to sanction was submitted. As per Maharashtra Public Workers Manual para 194, main tender (B-1 Agreement) is to be accepted and then

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temporary work, if needed is to be taken up on A-2 Agreement by obtaining approval from the Competent Authority. However, in this case such approval are given prior to the acceptance of main tender, resulting into irregularities.

Charge NO.4. : Para 217 of the Maharashtra Public Workers Manual state as below:

“In case of acceptance of tenders, they are handled finally by the Executive Engineer, Superintendent Engineer and Chief Engineer, it should not take more than 30 days, 60 days, 90 respectively from the opening of tender. If because of some reason delay occurred, the circumstances for the unavoidable delay should be communicated to the next higher officer.”

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As per the provisions of para 217 of the Maharashtra Workers Manual, after opening of tender it should be finally dealt by Superintending Engineer within 60 days. However in case of 75 tenders which required more than 60 days for acceptance. Hence, the provision of para 217 of the Maharashtra Public Workers Manual are not followed by the Superintending Engineer.

Charge No.5 : As per the Government circular No.Misc.1098, (96/98) M.P. (P) dated 4.9.2000, authorities competent to check and certify the transport distance (lead) have been designated. For any reason/ item if the transportation distance is more than 2 kilo meter, then it is responsibility of Superintending Engineer to

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obtain the prior approval from the Chief Engineer. However, during execution of Ghosikhurd Project components this circular is not followed.

Charge No.6 : Recommendation for advance to be given to eight contractors, have been made in spite of any enabling provisions in the tender agreement. In Maharashtra Public Works Account Code (para 10.2.21) the advance payment to contractors is prohibited. Similarly there are no unique method adopted while deciding the advance payment to contractors. Because of this irregularities took place in allocation of available government fund.

In aforementioned charges No.1 to 6, Maharashtra Public Works Manual 6th edition

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1984 para 141(3) and para 142, para 143, para 313, and para 315, para 194, para 217, Maharashtra Public Works Accounts Code 10.2.21, circular dated 4.9.2000 and Maharashtra Civil Services (conduct) Rules 1979 – Section 3(1) and (2) is not followed and the he is responsible for the violation.

26. It is submitted by learned counsel for the applicant that from the departmental enquiry the applicant is already exonerated. The standard of proof required for the departmental enquiry is preponderance of probability. However, to prove the charges under the alleged offences, proof beyond reasonable doubt is required. When the applicant is already exonerated from the departmental enquiry, it means that the department could not prove the allegations in the departmental

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enquiry for which standard of proof requires is preponderance of probability and not proof beyond the reasonable doubt if could not be produced and, therefore, the no purpose would be served by directing the applicant to face the trial. In support of his contentions, learned counsel for the applicant placed reliance on the decision in the case of **Ashoo Surendranath Tewari vs. Deputy Superintendent of Police** *supra*.

27. The charges framed in the departmental enquiry and allegations in the present crime are different. It is alleged in the present crime that the applicant was entrusted with the job of working on the Gosikhurd Project and was not only found in the act of increasing the project of the tender cost but also found in giving favour to the contractor by recommending mobilization advance @ 10% against the provisions of law.

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Accordingly, amount of 10,49,00,000/- was paid to the contractor. This act of the applicant was contrary to the provisions of Sections 193(4) and 233 of Rules made available for Maharashtra Sarvajanic Bandhkam Vibhag. It is further alleged that due to the recommendation of the applicant, the advance was sanctioned to the contractor contrary to the provisions of law which resulted into illegal flow of money generated to the contractor. The another act of the applicant was increasing the project of tender cost contrary to the provisions of law. The applicant has forwarded proposal letter to the higher authorities on 10.10.2006 on the basis of which the Hindustan Construction Company was called for negotiation. Hence, in stead of increasing the proposal of 30% extra, tender cost was increased by 20.75%.

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28. Thus, the applicant has increased project cost illegally by recommending the same. Thus, the applicant contributed while working as Superintending at that point of time and caused the loss to the Government to the tune of Rs.781.39 crores.

29. On going through the decision in the case of **Ashoo Surendranath Tewari vs. Deputy Superintendent of Police *supra*** it also shows that after referring the various judgments, the Hon'ble Apex Court has culled out the ratio of those decisions by referring its earlier judgment and observations in para No.38 in **Radheshyam Kejriwal vs. State of West Bengal**, reported in (2011)3 SCC 581, which are reproduced as follows:

“38. The ratio which can be culled out from these decisions can broadly be stated as follows :-

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(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding.

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If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases”.

30. On going through the charges framed in the departmental enquiry and the charges levelled against the applicant, it reveals that the same are not similar. The charges against the applicant are not only to the extent of increasing the tender cost but also allegations against the prosecution is advancing monetary gain contrary to the provisions of the Maharashtra Public Workers Manual.

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31. Thus, involvement of the applicant is not only in increasing the cost of tender but also causing loss to the Government by showing the favour to the contractor which is against the provisions of the law and, therefore, charges framed in the departmental enquiry and the allegations levelled in the present prosecution are not identical.

32. This aspect is further considered by the Hon'ble Apex Court in the case of **State of N.C.T. of Delhi vs. Ajay Kumar Tyagi, (2012) 9 SCC 685** wherein it is held that the exoneration in the departmental proceedings *ipso facto* would not result into quashing of criminal prosecution. However, if the prosecution against is solely based on finding in a proceeding and that proceeding is set aside by the superior authority in hierarchy, the very foundation goes and the prosecution

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may be quashed. However, that principle will not apply in the case of departmental enquiry as a criminal trial and the departmental proceedings are held by two different entities.

It is observed by the Hon'ble Apex Court by referring the earlier judgment **P.S.Rajya vs. State of Bihar, reported in AIR OnLine 1996 SC 54** which in relation to the effect of exoneration in the departmental proceedings or the criminal prosecution on identical charge. The said decision, therefore, does not lay down any proposition that on exoneration of an employee in the departmental proceedings, the criminal prosecution on the identical charge has to be quashed. It is well settled that the decision is an authority for what it actually decided and not what flows from it.

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33. Thus, as observed earlier that charges in the departmental enquiry and charges in the present prosecution are not identical one and, therefore, merely because the applicant is exonerated from the charges levelled against him in the departmental enquiry would not entitle him to discharge from the charges and, therefore, ground raised in the application to discharge him is also not sustainable.

34. The other ground raised that, the applicant is made accused in the present crime merely on suspicion, is also not sustainable as the evidence on record that various committee reports and statements recorded of the various witnesses, the Wadneri Committee Reports wherein it is specifically observed prior to technical approach of the tender notice, the advertisement for filing tender cost was issued. The records of the parties one of purchasee

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tender has not submitted the tender forms are not maintained properly. The demand drafts were not deposited in the account of the corporation. The committee report specifically observed that the tender cost was increased contrary to the manual of the Maharashtra Public Workers Manual. The specific allegations are levelled that the contractor company has received pecuniary advantage on the basis of the approval given by the applicant and loss is caused to the Government Exchequer. Therefore, the contention of the applicant that merely on suspicion the charges are levelled against him is also not sustainable.

35. The another ground raised that no offence is made out against the applicant as there was no demand. The applicant is charged with offence punishable under Section 13(1)(d) of the P.C.Act. Perusal of the said

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Section shows that it applies if a public servant is set to commit the offence of criminal misconduct, if he (1) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage or; ((2) by abusing position as public servant obtains for himself or for any other person valuable thing or pecuniary advantage or; (3) while holding office as public servant, obtains for person any valuable thing or pecuniary advantage without any public interest.

36. Thus, the act of the applicant is duly covered under Section 13(1)(d) of the P.C.Act.

37. Learned counsel for the applicant though placed reliance on the various decisions, the observations in the case of **C.Chenga Reddy and ors vs. State of A.P** *supra* are after a full-fledged trial.

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38. In the case of **State of Madhya Pradesh vs. Sheetla Sahai and ors** *supra* also the Hon'ble Apex Court has laid down ratio in the light of the facts of that case by considering the evidence adduced by the prosecution.

39. In the case of **Rishipal Singh vs. State of U.P** *supra* it has been observed that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While

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exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.

40. Thus, after having sifted and weighed the evidence on record, it is clear that prima facie material is available against the accused to frame the charge.

41. It is well settled law that at the stage of considering the applications for discharge, the court must proceed on the assumption that the material brought on record by the prosecution is proved and evaluated the material in order to determine as to whether facts emerging from the material take on its face value disclose the existence of ingredients necessary of the offence alleged. At the stage of considering the applications for

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discharge, the court must proceed on an assumption that the material brought on record by the prosecution is true and discloses the existence of ingredients necessary of the offence alleged.

42. The Hon'ble Apex Court in the case of **Captain Manjit Singh Viridi (Retd.) vs. Hussain Mohammed Shattaf & Ors** *supra* observed that truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court.

43. In the light of the above observations, as observed earlier that after having sifted and weighed the

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evidence on record, a *prima facie* case is made out against the applicant and, therefore, the order passed impugned calls for no interference.

44. In this view of the matter, the application being devoid of merits is liable to be rejected and the same is **rejected.**

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!