



Judgment

372 revn95.24

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

CRIMINAL REVISION APPLICATION NO.95 OF 2024

Vijay s/o Gowardhan Patkar,
aged about 57 years, occupation : service,
r/o behind bus stand,
Mahsool Colony, Taluka Akola,
district Akola. **Applicant.**

:: VERSUS ::

1. State of Maharashtra, through
Deputy Superintendent of Police,
ACB, Ambedkar Chowk, Washim,
district Washim.

2. Police Station Washim, through
its Police Station Officer,
Washim, district Washim. **Non-applicants.**

Shri S.S.Dhengale, Counsel for the Applicant.
Shri V.A.Thakare, Additional Public Prosecutor for the
Non-applicants/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 21/02/2025

PRONOUNCED ON : 10/03/2025

JUDGMENT

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1. Heard learned counsel Shri S.S.Dhengale for the applicant and learned Additional Public Prosecutor Shri V.A.Thakare for the non-applicants/State.

2. The present revision is filed by the applicant (accused) against order dated 20.4.2024 passed below Exh.13 by learned Additional District Judge, Washim in Special ACB Case No.26/2019.

3. By the said order impugned, the application filed by the accused for discharge in connection with Crime No.270/2018 registered with the non-applicant/police station under Section 7(13)(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 came to be rejected.

4. The accused is original accused No.1. He is chargesheeted on an allegations that on 19.6.2018 he was serving as Police Inspector and Incharge of Washim City Police Station. Accused No.2 Vijay Rathod was serving as

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Head Constable and also Writer of the accused. One Apparao Shinde is arraigned as an accused for the offence under Sections 306 read with 34 of the IPC along with co-accused Bhalerao. Said Apparao was also in service as a Police Constable at Police Headquarters at Washim. Co-accused Bhalerao was his close friend. Dattatraya Khadse (the deceased) was also Police Constable at Police Headquarters at Washim who committed suicide allegedly due to the abetment at the hands of complainant Apparao and his friend Bhalerao due to some money lending transaction between them.

5. On 19.6.2018, the said complainant filed the complaint by approaching Anti Corruption Bureau at Amravati on allegation that the accused and the co-accused demanded gratification amount from him for filing of the chargesheet by preparing documents in his favour. Accordingly, verification panchanama was drawn

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and veracity of the allegations was verified. After following due procedure, the trap was led and co-accused Vijay Rathod was caught while accepting the bribe amount. After completion of the investigation, chargesheet was filed against the accused and the co-accused. The accused filed an application vide Exh.13 for discharge on the ground that he has neither demanded nor accepted the amount. Thus no offence is made out against him under Section 7(13)(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

6. Another ground raised by him is that, in view of Section 17 of the said Act, only the Deputy Superintendent of Police is competent to carry out the investigation. However, the investigation is carried out by the Police Inspector. Thus, there is no compliance of said Section 17 of the said Act. For that ground also, the accused deserves to be discharged from the charges.

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7. Learned counsel for the accused submitted that there was no demand and acceptance by the accused. Thus, in absence of the demand, the accused cannot be compelled to face the charges by facing the trial. There is no evidence brought in the chargesheet showing that the accused has demanded the bribe amount. The complainant has also not filed any complaint to Anti Corruption Bureau against the accused. The trap panchanama also not discloses any involvement of the accused either in the demand or acceptance of the amount. The communication recorded during verification panchanama also not discloses any demand on the part of the accused. In view of Section 17 of the said Act, the Deputy Superintendent of Police or police of equivalent rank only can investigate the offences punishable under the said Act. However, the investigation is carried out by the police inspector who is neither authorized officer nor

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there is any proof of authorization to investigate into the offence. Learned counsel, therefore, prays that the application be allowed.

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

1. Union of India vs. Prafulla Kumar Samal and anr, reported in (1979)3 SCC 4;

2. Mukhtiar Singh (since deceased) through his LRs vs. State of Punjab, reported AIR 2017 SC 3382;

3. Satish Ganpatrao Suryawanshi vs. State of Maharashtra, reported in AIR OnLine 2020 Bom 3089;

4. Waman s/o Malahri Jambhulkar vs. State of Maharashtra, reported 2018(3) ABR (Cri) 26, and

5. Sunil s/o Bhalchanda Shinde vs. State of Maharashtra and anr, reported in 2020(1) Mh.L.J. (Cri) 304.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that the verification panchanama

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discloses conversation between the accused and the complainant which shows the demand by the co-accused for the accused and the accused has also asked to fulfill the said demand. He further submitted that the Director General of Police, Maharashtra State, is competent authority to remove the accused from service. As per the Government Resolution dated 12.2.2013 issued by the General Administrative Department, Maharashtra State, Mumbai for purpose and as required by Section 19(1)(c) of the Prevention of Corruption Act, 1988, has accorded the sanction for the prosecution. He further submitted that as per order dated 19.4.1989 issued by the Home Department, Government of Maharashtra, in exercise of the powers conferred by the first proviso to Section 17 of the said Act, the Government of Maharashtra authorizes all the Inspectors of Police in the Anti Corruption Bureau, Maharashtra State to investigate any offence under the

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said Act and to make arrest therefor without a warrant. Thus, there is an ample evidence to connect the accused with the alleged offence. Even the strongest suspicion is sufficient to frame charge against the accused and prays for rejection of the application.

10. The accused has filed the application for discharge. It is a settled principle of law at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the 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 to constitute the offence.

11. In **Union of India vs. Prafulla Kumar Samal and anr** *supra*, also the Hon'ble Apex Court held that in exercising

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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 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. Learned 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. 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

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rule of universal application. 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. 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.

12. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in **MANU/SC/1113 2023**, adverting 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**

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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** 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

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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 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

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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, the defence of the accused is not to be looked into at this stage when the application is filed for discharge.

14. What is to be seen is that, whether there is a sufficient material to frame the charge. Even, strong suspicion is sufficient to frame the charge.

15. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge.

16. The expression 'the record of the case' used in Section 227 of the Code of Criminal Procedure is to be understood as documents and material, if any, produced

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by the prosecution. The provisions of the CrPC do not give any right to the accused to produce any document at the stage of framing of the charge. The submissions of the accused are 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.

17. At the stage of entertaining the application for discharge under Section 227 of the CrPC, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

18. With the above principle, if the material in the present case collected during the investigation is

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discussed, there is no dispute as to the fact that the accused was serving as Police Inspector at the relevant time and accused No.2 was serving as his Writer. Complainant Apparao was also serving as a Police Constable and was arraigned as an accused in connection with committal of the suicide by another Police Constable Dattatraya Khadse. As per his allegations, while releasing him on anticipatory bail, he was directed to attend the police station. Accordingly, he was attending the police station. At the relevant time, the accused other co-accused demanded from him gratification amount on assurance that they would help him in the investigation. On 15.6.2018, on behalf of the accused, co-accused Vijay Rathod has demanded the amount. As the complainant was not willing to pay the amount, he approached the Anti Corruption Bureau at Amravati and lodged the report. After registration of the crime, the investigating

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officer has verified genuineness of the allegation by recording communication between the complainant and both the accused. From the said communication, it revealed that both the accused demanded the amount towards gratification and the co-accused has accepted the same. During the trap, the co-accused was found accepting the amount. The communication recorded in verification panchanama discloses that the accused has also demanded the amount and asked the complainant to do whatever the co-accused is asking to do and, therefore, after obtaining the sanction, the chargesheet was filed against the accused.

19. Thus, as far as the demand is concerned, the ample material is on record to show involvement of the accused. The specific communication between the complainant and the accused recorded during verification panchanama in a

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digital voice recorder clearly shows his involvement in the offence.

20. In rest of the decisions relied upon by learned counsel for the accused observations are, the demand and acceptance is after full-fledged trial.

21. As observed earlier, at this stage, whether material to be considered is sufficient to frame charge, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is and, therefore, decisions *supra* are not helpful to the accused.

22. The another ground raised by the accused is that the investigation is not carried out in view of Section 17 of the said Act. As per the submissions, only the Deputy Superintendent of Police can investigate any offence

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under the said Act without order of the Metropolitan Magistrate or the Magistrate of First Class, as the case may, or make arrest therefor without warrant. Section 17 of the said Act deals with persons authorized to investigate. The said Section 17, is reproduced hereinunder for reference:

“17. Persons authorized to investigate. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under

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this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or makes arrest therefor without a warrant:

Provided further that an offence referred to in [clause (b) of sub-section (1)] [Substituted 'clause (e) of sub-section (1)' by Act No. 16 of 2018, dated 26.7.2018.] of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police”s.

23. As far as the present case is concerned, Section 17(c) of the said Act is relevant which shows that elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any

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offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant

24. Admittedly, in the present case, the entire investigation is carried out by the Police Inspector and only the chargesheet is filed by the Superintendent of Police.

25. Learned Additional Public Prosecutor for the State placed reliance on the order dated 19.4.2019 issued by Home Department, Government of Maharashtra. The said order specifically shows that in exercise of the powers conferred by the first proviso to Section 17 of the said Act, the Government of Maharashtra authorizes all the Inspectors of Police in the Anti Corruption Bureau,

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Maharashtra State to investigate any offence under the said Act and to make arrest therefor without a warrant.

26. The above said aspect is also dealt with by the Hon'ble Apex Court in the case of in the case of the **State Inspector of Police Visakhapatnam vs. Surya Sankaram Karri, reported in AIR 2007 SC (SUPP) 1860** wherein it has been observed that when a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in Administrative Law. The statutory functionaries are enjoined with a duty to pass written orders.

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27. In view of the above observations, in the present case, the order dated 19.4.1989 issued by the Home Department, Government of Maharashtra shows that the Government of Maharashtra authorizes all the Inspectors of Police in the Anti Corruption Bureau, Maharashtra State to investigate any offence under the said Act and to make arrest therefor without a warrant.

28. Thus, in view of first proviso to Section 17 of the said Act, the Maharashtra State Government by issuing written order authorized officers of the rank of Inspector of Police to investigate the offence without the order of the Metropolitan Magistrate or the Magistrate of First Class.

29. Thus, applying the principles narrowed down by the Hon'ble Apex Court and after sifting and weighing the

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evidence on record, there is a sufficient material against the accused to frame the charge against him.

30. In this view of the matter, the order dated 20.4.2024 passed below Exh.13 by learned Additional District Judge, Washim in Special ACB Case No.26/2019 whereby the application for discharge is rejected is legal and proper one and no interference is called for. As such, the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!