

KAHV010007202021



Presented on :22.02.2019

Registered on : 22.02.2019

Decided on : 07.06. 2024

**IN THE COURT OF PRINCIPAL DISTRICT AND
SESSIONS JUDGE & SPECIAL JUDGE (PCA),
HAVERI.**

PRESENT

**SRI. K. C. SADANANDSWAMY
B.Com., LL.M,
Prl. District & Sessions Judge
& Special Judge (PCA), Haveri.**

DATED THIS 7th DAY OF JUNE, 2024.

Spl.Case.(SVC) No.2/2021

Complainant : State of Karnataka
Lokayukta Police Station
Haveri.
(By Learned Spl. Public Prosecutor)

-Vs-

Accused No.2 : Smt.Gouramma D/o Kenchappa Barki,
Age 38 years,Occ:SDA,Tahasildar office
Revenue Quarters, Haveri.

(By Sri. P.C.Banakar, Advocate)

**ORDER ON APPLICATION U/s 239 of Cr.P.C. FILED
BY ACCUSED NO:2**

Accused No.2 has filed this application under Section 239 of Cr.P.C seeking permission of this court to discharge her from charge sheeted offences. Lokayukta police have filed charge sheet against accused for offences punishable under Section 7(a) (b) and (c) of Prevention of Corruption Act.

2. It is mentioned in the application that accused No.2 is innocent. She has not committed any offence. Accused No.2 has reiterated contents of complaint allegations and charge sheet materials and other record. There is no prima-facie materials to register this case against accused No.2. There is no prima-facie material to conduct investigation against accused No.2 in this case. The evidence collected by IO has not constitute any offence against accused No.2. There is no demand of money from the complainant by this accused No.2. She has not accepted any money from the complainant. This accused No.2 has not called complainant over mobile phone. She has never demanded any money. There is

serious lacuna on the part of investigating agency. Trap was conducted twice. It was not succeeded. There is no connection between first accused and second accused in respect of alleged crime. The prosecution has not produced records prima-facie to prove/make out ingredients of Section 7 of PC Act. The prosecution sanctioned order is against materials on record. There are no sufficient grounds to proceed against accused. No.2. It is prayed that this application is to be allowed. Accused No.2 is to be discharged from charge sheeted offences.

3. The Special Public Prosecutor has filed objection to above application contending that application is not tenable under law. He has reiterated contents of complaint, FIR and charge sheet material. The evidence collected by IO has reasonably believe that this accused No.2 has also committed offences along with other accused. There are no valid and satisfactory grounds to allow this application. Second accused has demanded bribe amount through first accused. Accused No.1 and 2 have caused delay in issuance of no objection certificate to complainant. It is prayed that application filed by

accused No.2 under Section 239 of Cr.P.C., is to be dismissed.

4. This Court has heard arguments on both sides and perused records carefully.

5. The following points are arisen for my consideration for decision of this case are as under:

- 1) Whether accused No.2 has made out valid and satisfactory grounds to allow application filed U/s 239 of Cr.P.C.?
- 2) What order?

6. My answer to above points are as under;

Point No.1 In affirmative

Point No.2 As per final order

for the following;

:REASONS:

7. **POINT No.1:-** I have carefully gone through contents of application, objection and other charge sheet materials meticulously and carefully. ACB police have registered criminal case against this petitioner and another in Crime No.1/2020 for the offences punishable under Section 7(a)(b) (c) of PC Act.

8. Accused No.2 has filed this application under Section 239 of Cr.P.C., The said provision is not made applicable to present case. Accused No.2 ought to have file application under Section 227 of Cr.P.C., Merely wrong quoting of provision of law is not a ground to dismiss application. This court has to consider contents of application for the purpose of decision on merits. Application filed under section 239 of Cr.P.C by accused No.2 is considered by this court as application is filed under Section 227 of Cr.P.C.

9. It is alleged in the complaint, FIR, charge sheet and police records that accused No.2 is working as SDA, at Tahasildar Office, Haveri. The complainant has requested accused No.1 and 2 for issuance of no objection certificate. Accused No.1 and 2 have postponing the same for 7-8 months. First accused has demanded Rs.5000/- from complainant. The same was recorded to his mobile phone. On 4.3.2020, ACB police have received complaint from complainant and registered a case. On 25.1.2019, the complainant has made an application to Revenue Inspector for verification of land. On 28.5.2019, notice was also issued to complainant. On

7.6.2019, the complainant has filed application second time before Tahasildar. Accused No.2 has not given no objection certificate to the complainant without any reason. She has been postponing the same. Accused No.2 has demanded bribe amount of Rs.5000/- through accused No.1 from complainant. Accused No.1 and 2 have postponing issuance of no objection certificate. Accused No.1 has received bribe amount of Rs.3,000/- through his staff Mariyappa from complainant. Accused No.1 and 2 have planned together for demand of illegal gratification from complainant. They have unnecessarily caused delay in issuance of no objection certificate. Subsequently, they have demanded bribe amount. Therefore, IO has submitted charge sheet against accused No.1 and 2 for above said offences.

10. By considering entire contents of complaint, FIR, statements of witnesses, pre-trap panchanama, trap panchanama, voice recording of complainant and accused No.1 and 2 and others, there is no specific records before this court for prima-facie to made out that accused No.2 has demand bribe amount from complainant for issuance of NOC certificate. Admittedly,

accused No.2 was not present at the time of trap panchanama conducted by Lokayukta police. NOC was ready for issue on 28.2.2020 as per records produced in this case. The complaint is lodged on 4.3.2020. Trap panchanama was conducted on 4.3.2020 and 5.3.2020. Accused No.2 has applied leave on 4.3.2020. She was not present at the time of conducting trap panchanama. There are no records produced by prosecution at this stage on prima-facie to show that accused No.2 has made a demand for bribe amount from complainant.

11. The voice recorded between complainant and accused No.2 was tested by expert as per FSL report. It is mentioned that audio file present in CD-R marked as D-4 does not contain speeches with respect to female speaker said to be Gouramma Barki. Hence, speaker identification and speaker comparison is not possible with respect to sample speeches present in CD-R marked as D-21. Therefore, even voice recording of accused No.2 with the complainant is not matching. The voice of accused No.2 has not detected. The expert report on prima-facie is not supporting prosecution to frame charge against accused No.2.

12. Merely delay in issuing no objection certificate by accused No.2, which itself is not a ground to frame charge against second accused under provision of Section 7 of the PC Act. There is no prima-facie materials to connect accused No.2 for crime in respect of alleged demand of bribe amount by her from complainant and receipt of bribe amount by accused No.2. Admittedly, bribe amount is recovered by Lokayukta police from accused No.1 through CW.7 Mariyappa under trap panchanama, which was successful. Therefore, accused No.2 was not present at time of trap panchanama.

13. Shiristedar Nagaratna Kale has not stated any evidence against accused No.2 in her statement to attract provision of PC Act. The Tahasildar Shankar G S has given statement before ACB police on 15.9.2020, wherein, he has stated that complainant has stated before him that A-2 has caused delay in issuing NOC certificate. But, in the same statement, it is mentioned that accused No.2 has requested complainant to submit re-grant order copy for issuance of NOC certificate. The complainant has not produced re-grant certificate. The Tahasildar has asked accused No.2 to prepare NOC and

issue to complainant. The statement of Tahasildar Shankar G S clearly revealed that duty is caste on complainant to produce grant certificate true copy before revenue officials, which is one of the condition for issuance of NOC certificate. Except statement of Tahasildar, statement of other witnesses during investigation do not supporting prosecution case to connect accused No.2 for alleged crime. Therefore, this court is of the opinion that the prosecution has not prima-facie produced records and documents to connect accused No.2 for alleged commission of offence under provisions of PC Act. There are no sufficient materials to frame charge against accused No.2 in view of discussions made in above para in detail.

14. I have gone through copy of order produced by Special PP in Criminal Appeal No-445 - 446/2019 dated 07/03/2019 passed by Hon'ble Supreme Court (State by DySP and anti corruption, Tamilanadu V/s Doraiswamy). I do agreed principle laid down in the said decision. The role of trial court and High Court in considering discharge application is limited. There is no need of mini trial. In that decided case, respondent No.1 and 2 were working as

Police Inspector, Police Sub Inspector in Tamilnadu State services. Both were charged for offences under Section 7 and 13 of PC Act. CJM has allowed application on 29.6.2015 and discharged them from charge sheeted offences. State has preferred revision before Hon'ble High Court. High Court has dismissed revision petition confirming CJM order. State has preferred criminal appeal before Hon'ble Supreme Court. It is observed by Apex court that whether trial court and high court justified in allowing application based on documents filed by State along with charge sheet. It is further observed that High court acted as appellate court than as a revisional court as if it was hearing appeal against final verdict of its special court. In that decided case, prosecution has not produced any evidence much less documentary to show that accused No.1 and 2 were present in room No.4 of said Arunachala Lodge/Guest house. There is material contradictions. The Hon'ble Apex Court has set aside order. Application filed by respondent is dismissed. Charge is going to frame in the decided case. But, in the case in hand, there are no specific records to connect accused No.2 for alleged receipt of bribe amount. There is no charge against

accused for offence punishable under Sec.7 and 13 of PC act. There is no demand of bribe amount from complainant by accused. Therefore, principle laid down in said decision is not helpful for contention of Special Public Prosecutor for State.

15. I find some force in contentions of learned counsel for accused No.2 as regard to there is no sufficient material evidence to frame charge against accused and she has not demanded any bribe amount and police have not seized bribe amount from second accused. I find no merits in contentions of learned public prosecutor for State as regard to there is a prima -facie sufficient material to proceed against accused No.2.

16. Accused No.2 has made out valid and satisfactory grounds for allowing application filed under Section 239 of Cr.P.C. It is a fit case to allow application filed by accused No.2. I have constrained to answer point No.1 in affirmative.

17. POINT No.2: In result, I proceed to pass following;

ORDER

Application filed by accused No.2 U/s 239 r/w 227 of Cr.P.C is hereby allowed. Accused No.2 is discharged from offence punishable under Sec.7 of Prevention of corruption Act.

(Dictated to Stenographer Grade-I transcribed and typed by her, print out taken, signed and corrected by me and then pronounced in open court on 7th day of June, 2024)

**(SRI. K. C. SADANANDASWAMY)
PRL. DISTRICT AND SESSIONS JUDGE,
HAVERI.**

