

1. CNR-MHAK01-001499-2014

Spl. Case No. 08/2014
State Vs. Sunil

ORDER BELOW EXH.2

1] This is an application filed by the accused for discharge, who has been prosecuted for the offence punishable under Sections 7, 12, 13 [1] [d] r/w. Section 13 [2] of the Prevention of Corruption Act, 1988.

2] The background facts of the case as depicted in application are that the accused is working as a Talathi pertains to village Paras. The complainant Bhaurao Lande, R/o Khadaki, Akola alleged that in the 7/12 extract of the agricultural field situated at Paras, the name of Kamal Laxmanrao Tayade and Namdeo Punjaji Mali found recorded additionally. On 5/4/2013, the complainant had shown the 7/12 extract of disputed names to the accused. The names of additional persons in 7/12 extract were dangerous and to delete that names permission from Tahsildar was required. For that the accused initially, demanded Rs. 50,000/- and then reduced it to Rs. 35,000/-. Thereafter, the complainant obtained some documents from Tahasil Office, Balapur. On 6/4/2013, the accused made a phone call to the complainant for arranging money. The complainant being not willing to pay said bribe money, approached to the Anti Corruption Bureau, on his complaint, a trap was laid on 09-04-2013 and accused came to be arrested.

3] It is contended that that the allegations against the accused are false. He submitted that on perusal of charge-sheet it is found that the independent persons were found in the hotel at the time of alleged incident. But, their statements are not recorded nor they are cited as a

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witness in the charge sheet. The alleged voice during the pre-trap verification panchanama alleged to have been recorded is against the violation of natural justice and no such phone call have been called at any time and it is fabricated one. It is further alleged that the alleged voice have been recorded is against the law and it can not be said to be the part of investigation.

4] It is further contended that the accused had been falsely implicated and there was no demand of amount from the accused. The F.I.R. has been registered by the Investigating Officer after the exercise of the trap. Therefore, the accused is entitled to be discharged, as there is no compliance of the provisions of Section 154 of Cr.P. Code. It is further submitted that the investigation officer have no power to investigate the case. There is no prima facie evidence against the accused and, therefore, the accused is liable to be discharged.

5] The learned APP has opposed the application by filing say at Ex. 3 and thereby submitted that there is prima facie evidence of demand and acceptance of Rs. 35,000/- by the accused. It is further contended that investigation has been carried out by duly authorized person as per law. sufficient material on record against the accused. Moreover, proper procedure has been followed in recording F.I.R. and there is no infirmity in the investigation. As such, the prosecution has prayed for rejection of the application.

6] Heard learned Advocate Shri. Hatekar for the accused and Shri. Khotre learned A.P.P. for the State.

7] Following points arise for my determination and I have recorded my findings against them for the reasons given below :-

<i>Sr.No.</i>	<i>Points</i>	<i>Findings</i>
1.	Whether the applicant/accused is entitled for discharge ?	No.
2.	What order ?	As per order below

REASONS

As to Point No. 01 :-

8] Since the present applicant is seeking discharge, it would be significant to mention that discharge application is entertained only in those cases, where the Court is satisfied that there is at all no prima facie sufficient material/evidence on record to frame charge against accused. It has to be seen whether there is sufficient ground for proceeding against the accused. "Sufficient ground" for the purpose of framing of charge is not a ground for conviction, but the ground for putting the accused to trial. As per as the grounds raised by the accused for discharge are concerned, it is significant to mention that whether he has demanded/accepted bribe money from the complainant or not, in pursuant of trap is a matter of thorough evidence, which can be recorded during trial. At this stage, the only scope for deciding the application is whether there is prima facie sufficient material/ground for proceeding against the accused.

9] The other contention of the learned Advocate for the applicant/accused is that in this matter the F.I.R. has been registered in contravention of section 154 of Cr.P.C., causing great prejudice to the

accused. Whereas, the said contention has been negated on behalf of the prosecution, alleging that proper procedure has been followed, which caused no prejudice to the accused. Even otherwise the contention of accused that the voice samples were taken, without complying the provisions of law can not be accepted, as no particular contravention has been demonstrated in this application, which can be said to be fatal to the case of prosecution. In view of aforementioned submission in respect of registration of FIR after the exercise of trap, panchanamas etc. made on behalf of the prosecution, it can be said that no illegality can be said to be occurred while registering the F I R., after completion of initial inquiry cum investigation, as preliminary inquiry is permitted and justifiable before registration of F I R in such type of cases in view of Lalita Kumari's decision, *2014, Cri. L J, 470 Lalita Kumari vs. Govt. of U P.*

10] Perusal of record would show that the investigation of the case is conducted by Shri. Shrikant Kankal, who is appropriate person of the rank of Sub-Divisional Police Officer, empowered to conduct investigation in such type of cases. Therefore, said contention of accused that the I.O. has no power to conduct investigation, is of no consequence. It is equally clear that there is ample material on record pursuant to alleged trap involving accused in the form of various panchnamas, statements of witnesses, voice samples, forensic laboratory report and documentary evidence etc., therein for putting the accused on trial. It is also noteworthy that the sufficient ground for the purpose of framing of charge may not be a ground for conviction, but the ground for putting the accused to trial. Therefore, I do not find any merit in the submissions made on behalf of the accused, in view of various grounds agitated in the

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application. In view of above discussion, it is emerging that the grounds raised by the accused in the application are devoid of merits, therefore, can not be relied upon to discharge the accused. Accordingly, I answer point No.01 in the negative and pass the following order.

ORDER

Application Exh.02 is rejected.

Dated: 29-09-2018

Sd/-
(D. B. Patange)
Special Judge, Akola.

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Certificate

I affirm that the contents of this P D F file are same word for word as per original order.

*Name of the Steno : Smt. J.A.Morey
Court's name : District Judge -IV & Aast. Sessions Judge,
Akola.
Date of decision : 29-09-2018
Signed by P O on : 29-09-2018
Uploaded on : 29-09-2018*