

IN THE COURT OF ASSISTANT SESSIONS JUDGE,
AKOLA.

[Presided over by N.G. Shukla]

SPECIAL CASE [A.C.B.] NO. 19 OF 2015.

CNR No. MHAK01-002051-2015

STATE OF MAHARASHTRA

- **Versus** -

NAYANA POHEKAR AND OTHERS.

ORDER BELOW EX.30.

[Passed on 25th February, 2019]

1] Accused No.2 filed this application for discharging him from the offence punishable under Section 7, 12 and 13 (1) (d) of the Prevention of Corruption Act, 1988 [*hereinafter be referred to as “the said Act”*]. Additional Public Prosecutor [A.P.P.] filed say and resisted the application.

2] Case of prosecution, in brief, is that accused No.1 is Assistant Police Inspector and accused Nos.3 and 4 are Police Constables. Accused No.2 is Talathi. Charge against accused No.2 is abatement in accepting bribe by accused No.1. For the purpose of this application mentioning other facts is not

necessary. It is suffice to note that, accused Nos.1, 3 and 4 are discharged from the above mentioned offences vide order below an application [Ex.21] dated 15-6-2017. My learned predecessor in office observed in the said order that, there is no sanction under Section 19 of the said Act to prosecute accused Nos.1, 3 and 4 for the alleged offence. Hence, cognizance cannot be taken. In this view of the matter, accused Nos.1, 3 and 4 are discharged from the above offence.

3] After said order, accused No.2 filed this application for discharge.

4] I have heard the learned Advocate Shri P.M. Tayade, for accused No.2 and learned A.P.P. Smt. M.A. Pande, for the prosecution.

5] After going through allegations in the charge-sheet and the material collected during the investigation, it appears that, only the offence punishable under section 12 of the said Act in respect of abatement of accepting bribe has been slapped against accused No.2. Other offences under Sections 7, 11 and 13 (1) (d) of the said Act are not attracted against this accused. Thus, question arises that, whether sanction under Section 19 of the said Act is required for taking cognizance and prosecuting the accused for the offence punishable under section 12 of the said Act.

Section 19 (1) of the said Act is relevant in this context. It reads as below :-

“19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

- (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
- (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;*
- (c) in the case of any other person, of the authority competent to remove him from his office.”*

6] In view of above noted provision, it becomes clear that, for taking cognizance and to prosecute the accused for the offence of abatement to accept the bribe by another accused, sanction under Section 19 of the said Act, is not required. Even though, accused No.2 is public servant, but alleged act is not done by him in his official capacity. He is also not prosecuted as a public servant for abating the crime by other accused. Even though, the other accused are discharged, but on the same ground,

this accused cannot be discharged unless the sanction is required to take cognizance of the offence allegedly attracted against this accused. As noted above, only the offence punishable under Section 12 of the said Act attracts against this accused. Thus, in view of provision under Section 19 (1) of the said Act, sanction of appointing/removing authority of accused No.2 is not required for prosecuting this accused. Hence, in my considered view, accused No.2 would be discharged in absence of sanction to charge-sheet him in this case.

7] Except the ground of absence of sanction, there are no other grounds raised in the application for seeking discharge of accused No.2. Apart from that, it appears from the record that there is no material to frame charge against accused No.2 for the offence punishable under section 12 of the said Act. Hence, application deserves to be rejected. Accordingly, I pass following order -

Order

The application [Ex.30] is hereby rejected.

[N.G. Shukla]

Assistant Sessions Judge,
Akola.

Date – 25-2-2019.

- CERTIFICATE -

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

Name of Steno : N.V. Khokale

Court Name : Ad-hoc District Judge-1,
Akola.

Date : 25-2-2019.

Signed by Presiding Officer on : 26-2-2019.

Uploaded on : 26-2-2019.

DISTRICT AND SESSIONS COURT
AKOLA