

ORDER BELOW EXH.2

1] This is an application filed by the accused for discharge, who has been prosecuted for the offence punishable under Section 7, 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 father of the complainant is having the agricultural field at Rel, Tq. Akot, Distt. Akola admeasuring 17 acres. The cheque amount of cotton subsidy of Rs. 8000/- was received in the name of the father of the complainant. But, as he was dead the same amount was to be transferred in the name of mother of the complainant. On 07-05-2013 the complainant met with the accused, who was village Talathi of Rel and handed over the documents. The accused demanded Rs. 1000/- to transfer the cheque in the name of mother for the same and asked him without payment the work will not be done. The complainant being not willing to pay said bribe money, approached to the Anti Corruption Bureau and on his complaint, a trap was arranged on 14/05/2012.

3] It is further contended that the accused has been falsely implicated. It is further contended that at the time of verification panchanama no specific demand has been made by the accused. Therefore, prima facie the allegation of demand and acceptance as a bribe can not be fulfilled on the basis of statements and panchanama. 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 contended that the investigation officer has no power to conduct the investigation in this case, and he conducted investigation in

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contravention of section 17 of Prevention of Corruption Act. There is no prima facie evidence against the accused and, therefore, the accused is liable to be discharged.

4] The learned APP has opposed the application by filing say at Exh. 6 and thereby alleged that there is sufficient material on record against the accused. It has been also alleged that the accused not only demanded but also accepted the bribe amount of Rs. 1000/-. 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.

5] Heard learned Advocate Shri. P.D. Hatekar for the accused and Shri. S.M.Khotre learned A.P.P. for the State.

6] 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 :-

7] Since the present accused is seeking discharge, it would be paramount to state that discharge application is entertained only when the Court is satisfied that there is at all no prima facie sufficient material/evidence on record to frame charge against accused. It has only to be seen whether there is sufficient ground for proceeding against the accused. "Sufficient ground" for the purpose of framing of charge may not be a ground for

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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 accepted/demanded or not the bribe money from the complainant, in pursuant of trap is a matter of thorough evidence, which can only be ascertained during trial. At this stage, the limited scope for deciding the application is whether there is prima facie sufficient ground/evidence for proceeding against the accused. Therefore, the contention of accused that there was no demand or acceptance of bribe on behalf of accused, can not be considered at this stage, which can only be looked into after the evidence recorded during trial.

8] 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 contested on behalf of the prosecution, alleging that proper procedure has been employed, which caused no prejudice to the accused. In view of aforementioned contention 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 can be permitted and justifiable before registration of F I R in such type of cases in view of Lalita Kumari's landmark decision, **2014, Cri. L J, 470 Lalita Kumari vs. Govt. of U P.**

9] It is also emerging that there is ample prima facie material on record pursuant to alleged demand and acceptance of bribe, trap etc. in the form of various panchnamas, statements of witnesses and documentary evidence various communications, forensic report etc., therein for putting the accused on trial. It is also noteworthy that the said material can be construed

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as sufficient ground for the purpose of framing of charge and ground for putting the accused to trial. Therefore, I do not find any merit in the submissions of the accused, in view of various grounds raised in the application. Therefore, it can not be said that there is absolute no evidence to frame charge against the accused, in the given facts and circumstances of the case. In view of above discussion, it is emerging that the grounds depicted 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.2 is rejected.

Dated: 12-10-2018

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 & Astt. Sessions Judge,
Akola.
Date of decision : 12-10-2018
Signed by P O on : 12-10-2018
Uploaded on : 12-10-2018*