

ORDER PASSED BELOW EXH.39 IN SPL. (A.C.B.) CASE NO. 5/2015.

1. This application is on behalf of accused No. 3 to discharge him from from the charge of Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as only the 'P. C. Act, 1988'). It is no doubt that the charge-sheet has been filed of the offence punishable under Sections 7, 12, 13 (1) (d), read with Section 13 (2) of the P. C. Act, 1988. But so far as the present accused is concerned, the charge under Section 12 of the P. C. Act, 1988 is attracted. He has asked for to discharge him on the grounds that the conversation recorded in digital voice at the time of the spot panchnama discloses that he had no knowledge and concern about the transaction in between the complainant and the accused No. 1 and 2. He further contends that as per law mere having or recovering the bribe amount is not an offence. If any person accepts it with the knowledge that the amount is bribe amount, then and then only he is supposed to have committed an offence the evidence on record suggests that he had knowledge of that the amount which was found with him was the bribe amount.

2. Prosecution has objected the application by filing its say at Ex. 42. Prosecution contends that there is prima-facie material showing that the accused No. 3 had hatched conspiracy with accused No. 1 and 2 and in pursuance thereof he accepted the bribe amount.

3. I heard Advocate Shri V. M. Gomsale for the accused No. 3 and learned Public Prosecutor, Shri S. V. Deshpande for the State. Advocate Shri Gomsale taking help of spot panchnama and the conversation recorded at the relevant point of time submitted that the accused No. 3 was unknown to either complainant or the accused No. 1 and 2. On the relevant date and time he was standing in the shop namely, 'Vithhalraj Traders' along with his other friends as owner of the said shop was his friend. Merely because the accused No. 2 called him, he came out and sat on the chair taken from the said shop along with accused No. 2. The conversation happened amongst the parties at the relevant time discloses that the accused No. 3 made clear that he had no knowledge of and concern to the transaction he was only to count the money as per the direction of the accused No. 2. This fact itself discloses that the accused No. 3 had no knowledge about the nature of the amount. In such situation no offence of P. C. Act, 1988 attracts against him. So, he be discharged.

4. On the other hand, learned P. P. Shri S. V. Deshpande strongly submitted that the conversation which is part of the spot panchnama amongst the complainant, the accused No. 1 to 3 disclose that the accused No. 3 had knowledge at the relevant point of time that the amount was bribe amount. Despite that knowledge he accepted the said amount and by that way abetted the offence. The learned P. P.

submitted that prima-facie there is material against accused No. 3, so he cannot be discharged.

5. Only point for determination in such background is whether this application deserves to be allowed ?

6. My finding is in the negative for the reasons stated as below.

REASONS.

7. It is well established legal position that while dealing with the application under Section 227 of the Code of Criminal Procedure, the Court is not supposed to make roving and fishing inquiry or to ascertain the pros and cons of the prosecution story. The Court is supposed only to see whether there is prima-facie material to frame the charge against accused so as to put him on trial.

8. So far as applicant/accused No. 3 is concerned, he is alleged to have committed an offence under Section 12 of the P. C. Act, 1988. What Section 12 says is to be noted here:

“12. Punishment for abetment of offences defined in Section 7 or 11. - Whoever, abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

What is alleged that he (the applicant/accused No. 3) accepted bribe amount of Rs. 50,000/- from the complainant for and on behalf of

accused No. 1 and 2, and on having done so, he was caught red handed. The conversation amongst complainant and accused No. 1 to 3 at the relevant point of time So far as applicant/accused No. 3 is concerned, it requires to be noted here in Marathi.

खा.ई. श्री.राठोड	तुमच मला माहित नाही बर काय हाय ती व्यवहार व्यवहार माहित नाही उग आता ही मोजुण घेयच ती घेतो व्यवहार काय हाय ती माहित नाही माझ मत काय आपली कायी अट नाही व्यवहार काय ती माहित नाही.
तक्रारदार खाडप	पाणी पुरवठा अध्यक्ष हो
खा.ई. श्री.राठोड	हं म्हणलाव कि तुम्ही
तक्रारदार खाडप	मोजुण घेतलेल चांगल असतय
खा.ई. श्री.राठोड	नाही नाही तुम्ही अध्यक्ष हाव का किती राहिलेत दिले का सगळे

This conversation is available on page No. 25 of the prosecution documents. Before looking into this conversation, there is need to see what statements have been given by the owner of Vitthhalraj Traders namely, Pravin Namdeo Kotwad and friends of the applicant/accused No. 3 namely, Nandkumar Shivdas Motegaonkar and Laxman Baburao Salunke, who were at the relevant point of time were present in the shop. They all have stated that the accused No. 3 was in the shop, he was called by one of the persons who had sat on the bench put before the shop. Accordingly accused No. 3 went at them. Thereafter he came back and taking one chair from the shop again went thereat and sat on the chair. This statement suggests that there was acquaintance

in between accused No. 2 and the applicant/accused No. 3 and because of that he was called from the shop. The above noted Marathi conversation further prima-facie support to the prosecution allegation that the accused No. 3 accepted the bribe amount for the accused No. 1 and 2. So, it is improper to discharge him from the accusations at this stage. In the result, the application stands dismissed.

Dated: 08.08.2016.

(M.S.Kulkarni),
Additional Sessions Judge,
LATUR.