

Spl.Case (ACB) No.20/2016
State/Rajendra Gadade**Order below Exh.No. 8.**

1. This is an application filed by the accused for discharge under Section 227 of the Criminal Procedure Code.
2. Initially the accused approached to the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad under Section 482 of the Criminal Procedure (for short 'the Code') for quashing of the criminal proceeding vide Criminal Writ petition No.1556/2016. The Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad, pleased to dismiss the said application 'as withdrawn' and granted liberty to the accused to prefer proper proceeding for discharge. In view of the liberty,, the accused has preferred the present application for discharge.
3. Briefly stated the prosecution case is as under :

One Nasher Nurulla Chaudhari, Chief Operator was attached with M.S.E.D.C.L.company at Sub-Station Kati. On 15-06-2016 he was transferred to Sub Station at M.I.D.C.Osmanabad. He was intending to obtain leave for 10 days. Accordingly, on 17-06-2016 he applied for leave. The accused was Junior Operator and attached with M.S.E.D.C.L.at Sub Station, Kati. He demanded an illegal gratification of Rs.1000/- from the informant to get sanction of leave. The informant was not intending and willing to pay the bribe amount to the accused. Therefore, he approached to Anti Corruption Bureau, Osmanabad. On the basis of complaint, Dy.S.P.Gawade called two panch witnesses from Civil Hospital, Osmanabad.
4. A decision to get verified the demand of bribe amount was taken. Accordingly, the complainant, panch witnesses and A.C.B.officials went to Tuljapur. The complainant and panch No.1 approached to the accused. Their conversation was recorded in digital voice recorder. The demand of bribe was confirmed. Thereafter, A.C.B. officials decided to lay a trap. The informant arranged two currency notes of Rs.500/- denomination.

The investigating officer completed requisite formalities and smeared anthracene powder on the currency notes. The currency notes were kept in the right side pant pocket of the complainant with a direction, not to touch it unless the amount was demanded by the accused. The complainant and panch witnesses approached the accused. The complainant talked with him about leave application. The accused demanded illegal gratification of Rs.1,000/- for sanctioning leave. The complainant handed over the currency notes and the accused accepted it and kept in his shirt pocket. The complainant gave predetermined signal to the team member of the trap. Then the investigating officer and his team members rushed there. On the instructions of investigating officer, panch No.2 took out the currency notes from the shirt pocket of the accused. The numbers of the currency notes were tallied with the numbers noted in the pre-trap panchanama. Thereafter, post trap formalities were completed.

5. After completion of the investigation, charge-sheet came to be filed against the accused and sanction was obtained from the competent authority.

6. The accused contended that, he had neither demanded any bribe amount nor accepted the same. It is further contended that, the investigating officer had not seized the alleged leave application which is the foundation of the case. The complainant was already transferred from Sub-station Kati to Sub Station M.I.D.C.,Osmanabad. The accused was subordinate to the complainant. Therefore, it was not the duty of the accused to get sanction of the leave application. On these and amongst other grounds, he prayed to discharge him.

7. The learned Public Prosecutor resisted the application by filing say at (Exh.10). It is contended that, the investigating officer recorded the statements. There is sufficient evidence available on record to show that, accused demanded and accepted the bribe amount.

8. Heard learned Advocate Shri.P.M.Nalegaonkar, for the accused and Mr. S.B.Jadhavar the Public Prosecutor for the State.

9. The learned Advocate for the accused strenuously submitted that, the accused was sub-ordinate to the informant. He was not having authority to sanction the leave application. The said leave application was not seized by the investigating officer. It clearly reveals that, the work of the complainant is not pending with the accused. Therefore, he prayed to allow the application.

10. To buttress the above submission, he relied upon the Judgment of Hon'ble Bombay High Court in case of **Rangnath Ramkrishna Naphade -V/s- State of Mah., reported in 1994 (2) Mah. L.R.532**, wherein it is enunciated that,

“It is not the duty of the appellant to prepare the draft, but the plaintiff has to provide such draft. It cannot be said that, the appellant has misused his position as public servant for making any wrongful gain for himself and wrongful loss to others. The ingredients of Section 161 of Indian Penal Code or that of Section 5, (1)(d) have not been established by the prosecution.”

11. In opposition to this, the learned Public Prosecutor submitted that, the accused demanded illegal gratification of Rs.1000/- to sanction leave of the applicant. After verification of genuineness of the complaint, trap was laid and the accused was caught red handed on the spot by demanding and accepting Rs.1000/- from the informant in presence of independent witnesses. Therefore, there is sufficient material on record to proceed against the accused.

12. Before adverting to the rival submissions of the learned Counsels, it would be proper to examine the scope and ambit of the power under the Code. The Code provides that, upon consideration of the evidence and the documents submitted with the Police report as contemplated under section 173 of the Code and after hearing the prosecution and the accused, if the Court finds prima-faice case and grave suspicion to proceed against the accused, the Court has to frame charge but if there is no prima-facie case or grave suspicion, the Court shall discharge the accused.

13. In this context, the Hon'ble Supreme Court in case of **Sajjan Kumar -V/s- Central Bureau of Investigation, reported in (2010) 9, S.C.C.368**, wherein Hon'ble Apex Court has observed in para No.19 as under :

“It is clear that, at the initial stage, if there is a strong suspicion which leads the Court to think that, there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that, there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima-facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

14. A profitable reference can be made to the ruling of Hon'ble Apex Court in case of **Rajiv Thapar -V/s- Madan Lal Kapoor (2013) 3 SCC 330**, wherein Hon'ble Apex Court while dealing with issue of discharge in a complaint case, lodged at the instance of father of deceased girl, held in para 28 that, this is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution against the accused. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution, it would be impermissible to discharge the accused before trial. This is so, because, it would result in giving finality to the accusation levelled by the prosecution without allowing the prosecution to adduce evidence to substantiate the same.

15. In the backdrop of aforesaid exposition of law, I have gone through the documents charge-sheet filed on record. It appears from the record that, pre-trap panchanama was carried out in presence of panch witnesses. On appraisal of conversation recorded between the informant and accused, it reveals that, the accused demanded illegal gratification of Rs.1,000/- in

respect of leave application. After verification of genuineness of complaint, trap was laid. The accused accepted the bribe amount from the complainant. It is pertinent to note that, the bribe amount was recovered from the accused. It seems that, trap was successful.

16. At this juncture, it is necessary to refer relevant law contained in Section 7 of the Prevention of Corruption Act, 1988. It reads as under :-

Sec.7- Public servant taking gratification other than legal remuneration in respect of an official act:- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) or section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.

Explanation :- (a) “Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others in to a belief that he is about to be in office, and that he will then serve them he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration”. The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organization, which he serves to accept.

(d) “A motive or reward for doing”. A person who receives a gratification as a motive or reward for doing what he does not intend or is not

in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus, induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

17. It is pertinent to note that, explanation (d) clearly suggest that, a person who receives a gratification, the requirement of law is satisfied. It is not necessary to consider whether he was capable of doing or in a position to do official act for favour or disfavour.

18. In this context, the Hon'ble Apex Court in case of **Chaturdas Bhagwandas Patel -V/s- State of Gujarat, reported in AIR 1976, S.C.1497** enunciated that;

“If the public servant has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider, whether or not the public servant was capable or doing or intended to do any official act for favour or disfavour.”

19. In view of aforesaid exposition of law, I am not inclined to accept the contention of the learned Advocate for the accused that, the accused was junior to the informant and he was not in a position to sanction the leave.

20. It is pertinent to note that, after considering the material on record, the competent authority gave sanction to the prosecution. There is ample evidence on record more particularly the conversation recorded in voice recorder of the informant and accused, the accused demanded and accepted the bribe amount of Rs.1000/- from the informant. This is not the stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution against the accused. Mere non seizure of leave application is not sufficient to discharge the accused.

21. Considering the material on record, I am of the considered view

that, there is sufficient material on record to proceed against the accused. In view of the discussion made above, I do not find any plausible ground to allow the application. Hence, I am inclined to pass the following order :-

Order.

- i. Application for discharge stands rejected.

Sd/-

Date: 09-05-2017.

(R.N.Rokade)
Special Judge, Osmanabad.