

A.C.B.No.76/2022
State Vrs. Kailash

ORDER BELOW EXH.31

1. Read application, say filed. Heard both the Ld. Advocates.
2. This is application by applicant/accused no.2 for discharge.
3. Perused the file. Accused no.2 along with other one accused is being tried for offences punishable under section 7,12 of Prevention of Corruption Act,1988.
4. It is averment of accused no.2 that he is working as Revenue Inspector at Tahsil office,Washim along with accused no.1 who is working as Talathi. According to him, he is not concerned with the offence. Without effecting the pre-trap and trap panchanama, the offence came to be registered on basis of verification panchanama. There is no sanction obtained from competent authority. The allegations in the chargesheet against this accused are prima facie false. The work of the complainant was to be done by Tahsildar and the complainant was supposed to file application before Tahsildar for dividing the property in between brothers and sisters. Accused no.2 has not demanded any amount nor asked complainant to give anybody any amount. He is falsely chargesheeted without being their any material on record. Therefore, he has prayed for discharging him.
5. Though, Ld.advocate for accused argued in lines of the averments in this application, they do not carry merits. If the prosecution papers are gone through, in the complaint as well as in verification panchanama dtd.24/06/2020, there are recitals of demand by accused no.2. The further trap could not be led as complainant

retracted on account of pressure and fear that he and his family members will suffer.

6. On basis of verification panchanama, which disclose the demand, chargesheet is submitted against accused no.2. As regards obtaining sanction, same is part of record.

7. Whether the aforesaid evidence is sufficient or not will decide the fate of the trial. But, at this stage it cannot be said that there is no evidence against accused no.2. Therefore, the averments in the application that there is no demand by accused no.2 is not true. There is prima-facie evidence on record against accused no.2 if all documents relied upon by the prosecution are minutely perused. The script of conversation of the verification panchanama dtd.24/06/2020 also have specific demand being made by accused no.2. As there is prima facie evidence on the factum of demand, the application of applicant/accused no.2 is not genuine. I am not convinced with the arguments of Ld. advocate for applicant.

8. For all aforesaid discussion, I countenance arguments of Ld. A.PP as against the arguments of Ld. advocate for applicant. Application of applicant is devoid of merits. It deserves to be rejected. In result, I proceed to pass following order.

ORDER

1. Application is hereby rejected.

DT:-29/03/2025.

(C. P. Jain)
Additional Sessions Judge-1,
Washim.

A.C.B.No.76/2022
State Vrs. Kailash

ORDER BELOW EXH.32

1. Read application, say filed. Heard both the Ld. Advocates.
2. This is application by applicant/accused no.1 for discharge.
3. Perused the file. Accused no.1 along with other one accused is being tried for offences punishable under section 7,12 of Prevention of Corruption Act,1988(hereinafter referred as 'P.C.Act' in short).
4. It is averment of accused no.1 that he is working as Talathi at Tahsil office,Washim along with accused no.2 who is working as Revenue Inspector. According to him, he is not concerned with the offence. Without effecting the pre-trap and trap panchanama, the offence came to be registered on the basis of verification panchanama. There is no sanction obtained from competent authority. There is no report of Forensic Science Laboratory, hash value certificate on record. There is no compliance of 17A of the amendment Act. It also reveals that the complaint and statement of complainant dtd. 25/6/2020 and signature of panchas are different which is visible to naked eyes. The pre-verification and verification panchanama do not reveal the signature or thumb impression of complainant. False panchanama of audio recording is prepared. There is no outward inward number on the letter of medical officer. The allegations in the chargesheet against this accused are prima facie false. The work of the complainant was to be done by Tahsildar and the complainant was supposed to file

application before Tahsildar for dividing the property in between brothers and sisters. Accused no.1 has not demanded any amount nor asked complainant to give anybody any amount. He is falsely chargesheeted without being their any material on record. Therefore, he has prayed for discharging him. Ld. advocate for accused relied upon observations in following citations:-

1. **Kailash Chandra Agrawal And Anr. Vs. State of Rajasthan And Anr., on 7 April, 2020**
2. **Dilawar Balu Kurane Vs. State of Maharashtra, on 8 January,2002.**
3. **N. Vijayakumar Vs. State of Tamil Nadu, On 3 February,2021**
4. **Directorate Of Enforecement Vs. Gagandep Singh & Ors. On 17 February,2022**
5. **The State of Maharashtra Vs. Srirang Dagaduji Bale on 30 June,2021.**
6. **P. Satyanarayana Murthy Vs. Dist.Insp Of Police & Anr. On 14 September, 2015**
7. **B.Jayaraj Vs. State Of A.P on 28 March,2014**
8. **State of Kerala & Anr. Vs. C. P Rao on 16 May,2011**
9. **K.Shanthamma Vs. The State Of Telangana on 21 February, 2022**

5. The observations in the case of **Dilawar Balu Kurane** are worth reproduceable as they are with respect to the requirements to be seen while deciding present application. They are reproduced as follows-

“The settled position of law is that the Judge while considering the question of framing the charge under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the

Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (See *Union of India versus Prafulla Kumar Samal & Another* (1979 3 SCC5).”

6. If the prosecution papers are gone through, in the complaint as well as in the verification panchanama dtd. 24/06/2020, there are recitals of demand by accused no.1. The further trap could not be led as complainant retracted for further proceeding on account of pressure and fear that he and his family members will suffer. On basis of verification panchanama, which disclose the demand, chargesheet is submitted against accused no.1. As regards obtaining sanction, same is part of record.

7. Whether the aforesaid evidence is sufficient or not will decide the fate of the trial. But, at this stage, it cannot be said that there is no evidence against accused no.1. Therefore, the averments in the application that there is no demand by accused no.1 is not true. There is prima-facie evidence on record against accused no.1 if all documents relied upon by the prosecution are minutely perused. The conversation of the verification panchanama dtd. 24/06/2020 also have specific demand being made by accused no.1. As there is prima-facie evidence on the factum of demand, the application of applicant/accused no.1 is not genuine. I am not convinced with the arguments of Ld. advocate for applicant.

8. As regards the arguments of Ld.advocate for accused no.1 on the factum of non compliance of section 17A of the P. C.Act, accused

has to first satisfy the ingredients required for attracting this section. Section 17A of the P. C. Act is as follows:-

(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, **where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-**

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government.

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government.

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

9. In order to attract this section, there has to be case of recommendation made by him or decision taken by public servant in discharge of his official functions or duties. The observations in the **Kailashchandra Agrawal** relied upon by Ld. Advocate for accused are in respect of section 17A of P.C. Act. It is observed as under:-

Manifestly, the newly inserted provisions prohibit conducting of enquiry/inquiry or investigation into any offence under this Act alleged to have been committed by a public servant where the act alleged is relatable to any **recommendation made or decision taken by such a public servant in discharge of official functions or duties.**

Before initiating any inquiry against the public servants under the provisions of the P.C. Act, prior approval of the Government was a sine-qua-non and the FIR could not have been registered without such approval.

10. In present case, it is case of prosecution that, accused has demanded bribe for getting the share of the complainant and his brothers and sisters to be separated on 7/12 extract of land bearing gat no.387 admeasuring 1H,1.09R land. Therefore, in present case, there is no case of recommendation made by public servant or decision taken by public servant. Section 17A P. C. Act is attracted only for aforesaid two acts which is not made out in present case. Therefore, there is no requisite of prior approval for the enquiry, inquiry or investigation of the offence. The facts and circumstances in the cited case of **Kailashchandra Agrawal** are different than in present case. In the cited case, there was recommendation made and decision taken by the public servant which is not the case in present case. In cited case, the questioned decisions in furtherance whereof, the land subject matter of dispute was sold to and transferred in the name of the petitioners Kailash Chandra Agrawal and Nand Bihari, were issued by the respective public servants concerned i.e. the Land Record Inspector Chhotaram, the Patwari Ramratan and the Tehsildar Tejmal Choudary in discharge of their official duties. Therefore, the citation will not be helpful to accused.

11. The observations in the case of **N. Vijayakumar, Gagandep Singh and Others, Shrirang Dagduji Bale, P. Satyanarayani Murti, B.Jayaraj, State of Kerala and Another, K.Shanthamma**, are all with respect to final hearing. Therefore, they will not be helpful while deciding present discharge application.

12. The other arguments of accused are on technical points which are not helpful for deciding this application.

13. For all aforesaid discussion, I countenance arguments of Ld. A.P.P as against the arguments of Ld. advocate for applicant. Application of applicant is devoid of merits. It deserves to be rejected. In result, I proceed to pass following order.

ORDER

1. Application is hereby rejected.

DT:-29/03/2025.

(C. P. Jain)
Additional Sessions Judge-1,
Washim.

Certificate.

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original order.

Name of the Stenographer :- R.M.Rajurkar, Stenographer (Grade - 1)

Court Name :-Ad Hoc District Judge –1 and A.S.J.
Washim

Date :- 29.03.2025

Order signed by the

Presiding Officer on :- 02.04.2025

Order uploaded on :-02.04.2025