

(2016) 09 BOM CK 0034

In the Bombay High Court

Case No : Criminal Application No. 6451 of 2015

Ashok

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, 15, 7

Citation : (2016) ALLMRCri 4317 : (2017) 1 BomCR(Cri) 366

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. B.R. Waramaa, Advocate, for the Petitioners; Mr. D.R. Kale, APP, for the Respondent Nos. 1 and 2

Final Decision : Partly Allowed

Judgement

Sangitrao S. Patil, J.—The applicants have prayed for quashing of the First Information Report ("F.I.R.", for short) on the basis of which Crime No. 28 of 2015 has been registered against them in Bhagyanagar Police Station, Nanded for the offences punishable under Sections 7, 12 and 15 of the Prevention of Corruption Act, 1988 ("P.C. Act", for short).

2. It is alleged that one Ganpati Mohite and others, who were relatives of the complainant viz:- Nandkumar Dakhore, were connected with Crime No. 29 of 2015 for the offences punishable under Sections 326, 323, 504, 506, 34 of the Indian Penal Code ("I.P.C.", for short) registered in Police Station, Chudawa, Sub-Division Purna. The offence punishable under Section 307 came to be added therein subsequently. They were apprehending their arrest in connection with that crime. Investigation into that crime was assigned to the present applicant No. 1 i.e. A.P.I. - Kolte. Applicant No. 2, being Police Head Constable, had recorded the supplementary statement of the informant in that crime, on the basis of which offence punishable under Section 307 of the I.P.C. came to be added and as such, he also was assisting applicant No. 1 in investigating the crime.

3. Nandkumar Dakhore complained with the office of Anti Corruption Bureau, Nanded ("A.C.B.", for short) on 24.09.2015, alleging inter-alia that the application for pre-arrest bail filed by one of the accused in Crime No. 29 of 2015 namely, Ganpati Wamanrao Mohite was rejected by the Court and that the present applicants contacted him (i.e. Nandkumar Dakhore) and demanded bribe of Rs. 50,000/- for avoiding arrest of Ganpati Mohite and for giving a reply favourable to him in the High Court in the application for pre-arrest bail. The complainant Nandkumar Dakhore had no inclination to pay the bribe amount to the applicants, however, he showed his willingness to pay them under the belief that if the bribe is not paid, the applicants would arrest Ganpati Mohite and would not extend any help to him. On receiving that complaint, the informant namely, Ganpat Ahire, Police Inspector, A.C.B., Nanded arranged for laying a trap. However, prior to going to lay the trap, he decided to verify the demand of bribe from the applicants. Accordingly, on 24.09.2015 at about 3.27 p.m., the complainant Nandkumar Dakhore called applicant No. 2 on the Mobile phone, on which both the applicants had talks with the complainant Nandkumar Dakhore and asked him to meet at Nanded Near Taroda Naka, which place was subsequently changed to Chhatrapati Chowk, Purna Road, Nanded and then, to the Western Gate of Pawde Petrol Pump, near Wamanrao Pawde Mangal Karyalaya, Purna Road, Nanded. Accordingly, the complainant Nandkumar Dakhore met them. At that time, both of them demanded the amount of Rs. 50,000/- from him for avoiding arrest of Ganpati Mohite and to extend him help in getting the relief of pre-arrest bail from the High Court by filing a reply in his favour. After negotiations, the said amount was reduced to Rs. 40,000/-. The complainant Nandkumar Dakhore assured them to arrange for that amount and accordingly, the applicants as well as the complainant left that place. A panchnama in respect of verification of the demand of bribe by the applicants came to be prepared on 24.09.2015.

4. The complainant Nandkumar Dakhore went to the office of A.C.B. on 29.09.2015 with the amount of Rs. 40,000/-. The informant i.e. P.I. Ahire made necessary preparation for laying the trap and prepared the pre-trap panchnama. The complainant Nandkumar Dakhore contacted applicant No. 1 on phone twice asking him as to where he should come to pay the amount of Rs. 40,000/-.

5. It is stated that the applicants suspected of the proposed trap by the A.C.B. and therefore, they did not respond the complainant Nandkumar Dakhore. On 07.10.2015, the complainant Nandkumar Dakhore had an occasion to meet applicant No. 1 in the funeral of one Kisanrao Desai at Chudawa. At that time, the complainant Nandkumar Dakhore asked applicant No. 1 as to when he would be coming to Nanded whereon applicant No. 1 told that he did not want money and would help Ganpati Mohite. Thus, the trap failed.

6. On the basis of the demand of bribe made by the applicants, the informant P.I. Ahire lodged a report against the applicants in Bhagyanagar Police Station, Nanded on the basis of which, Crime No. 28 of 2015 came to be registered

against the applicants on 19.10.2015 for the offences punishable under Sections 7, 12 and 15 of the P.C. Act.

7. The learned Counsel for the applicants submits that Section 15 of the P.C. Act is not at all attracted to the facts of the present case, because it relates to an attempt to commit the offence referred to in Clause (a) or (d) of sub Section (1) of Section 13 of the P.C. Act. He further submits that mere demand for bribe would not constitute an offence punishable under Section 7 of the P.C. Act. He further submits that it is not clarified as to who is the principal accused and who is the abettor out of the present applicants. He submits that the above numbered crime has been registered against the applicants with a view to harass them. A total false report has been lodged against them. He, therefore, submits that the F.I.R. on the basis of which, the above numbered crime has been registered, may be quashed and set aside. He relies on the ratio laid down in the cases of *Narendra Champalal Trivedi v. State of Gujarat*, 2012 (4) Mh.L.J.(Cri.) 434 and *A. Sivaprakash v. State of Kerala*, AIR 2016 SC 2287.

8. On the other hand, the learned A.P.P. for respondent Nos. 1 and 2 submits that mere demand for bribe is sufficient to constitute an offence punishable under Section 7 of the P.C. Act. Applicant No. 2 abetted and assisted applicant No. 1 in demanding the bribe from the complainant ? Nandkumar Dakhore. Only because the applicants suspected that a trap is likely to be laid against them by the A.C.B., they did not go ahead with their demand and consequently, the trap failed. He submits that the contents of the report lodged by the informant P.I. Ahire, the complaint of Nandkumar Dakhore, the panchnama prepared in respect of the first demand of the applicants and the pre-trap panchnama, prima facie, disclose the offences punishable under Sections 7 and 12 of the P.C. Act against the applicants. He, therefore, submits that the application may be rejected.

9. From the contents of the report, it is prima facie clear that the applicants were investigating Crime No. 29 of 2015 registered against one Ganpati Mohite and others for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 of the I.P.C. in Police Station, Chudawa, Tq.Purna. The copies of the bail orders passed by the learned Addl. Sessions Judge, Parbhani in Criminal M.A. Nos. 660 of 2015 and 757 of 2015 show that except one Ganpati Mohite, other accused persons were extended the relief of pre-arrest bail. The said accused persons were relatives of the complainant Nandkumar Dakhore. As seen from the contents of the report, the applicants approached the complainant Nandkumar Dakhore and demanded bribe of Rs. 50,000/- for avoiding arrest of Ganpati Mohite and to facilitate him in getting pre-arrest bail from the High Court. Prior to laying of the trap on the applicants, it was decided to verify the demand of bribe made by the applicants. The contents of the report, prima facie, show that the demand for bribe made by the applicants was confirmed and it was found that after negotiations, the amount of bribe was reduced from Rs. 50,000/- to Rs. 40,000/-. Accordingly, the panchnama came to be prepared.

10. As per Section 7 of the P.C. 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 or for rendering or attempting to render any service or disservice 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) of Section 2, or with any public servant, whether named or otherwise, shall be liable to be punished. It is, thus, clear that even after a public servant agrees to accept or attempts to accept from any person any illegal gratification, he can be said to have committed offence punishable under Section 7 of the P.C. Act. It is not necessary to actually accept the illegal gratification for constituting the offence punishable under Section 7 of the P.C. Act.

11. In the present case, the trap failed, because after confirmation of the demand for bribe from the side of the applicants suspecting that there would be a trap, the applicants are stated to have decided not go ahead with their demand and did not extend the complainant Nandkumar Dakhore an opportunity to hand over the amount of bribe to them in response to their earlier demand. Consequently, there was no question of recovery of bribe amount from them. Applicant No. 2, prima facie, seems to have aided, assisted and thus, abetted applicant No. 1 in demanding the bribe amount. As such, there is sufficient material on record to show prima facie involvement of the applicants in the offences punishable under Section 7 and 12 of the P.C. Act.

12. In the case of Narendra (supra) cited by the learned Counsel for the applicants, it is observed in paragraph 12 that mere recovery of the tainted money is not sufficient to record conviction unless there is evidence that bribe has been demanded or money has been paid as bribe. This observation would be certainly applicable against a public servant for the offence punishable under Section 13(a) and (d) of the P.C. Act. In the present case, the applicants have not been connected under any of these clauses of Section 13 of the P.C. Act. Consequently, the above-mentioned preposition of law would not be helpful to the applicants to claim discharge and seek quashment of the F.I.R. lodged against them.

13. The learned Counsel for the applicants further cited a judgment in the case of Sivaprakash (supra), which pertains to the offence punishable under Section 13(1)(d)(ii) of the P.C. Act. This offence has no relevance in the present case. Therefore, the said judgment also would be of no help to the applicants.

14. So far as the offence punishable under Section 15 of the P.C. Act is concerned, we find substance in the contention of the learned Counsel for the applicants that in the absence of the allegations disclosing offence punishable under Section 13(1)(a) or (d) of the P.C. Act, the provisions of Section 15 would not be attracted. In the present case, the applicants have not been connected

with the offence punishable under Clauses (a) or (d) of sub-Section (1) of Section 13 of the P.C. Act. Hence, the F.I.R. lodged against them for the offence punishable under Section 15 of the P.C. Act, is liable to be quashed. In the above circumstances, the Application is liable to be allowed partly and accordingly, allowed partly with the following order:-

(i) The F.I.R. to the extent connecting the applicants with the offence punishable under Section 15 of the P.C. Act, 1988, is quashed and set aside.

(ii) The prayer of the applicants to quash and set aside the F.I.R. in respect of the offences punishable under Sections 7 and 12 of the P.C. Act, 1988, is rejected.

(iii) The application stands allowed partly.