

(2025) 02 BOM CK 0775
In the Bombay High Court
Case No : Writ Petition No. 4853 Of 2024

Nazim Mohammed Yusuf Shaikh And Anr	APPELLANT
Vs	
State Of Maharashtra And Ors	RESPONDENT

Date of Decision : 25-02-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 34, 380
Prevention of Corruption Act, 1988 — Section 7, 11, 12

Citation : (2025) 02 BOM CK 0775

Hon'ble Judges : Sarang V. Kotwal, J; S.M. Modak, J

Bench : Single Bench

Advocate : Mahesh Vaswani, Shreya Tiwari, Dharini Nagda, M.H. Mhatre, Patankar, Nivate

Final Decision : Dismissed

Judgement

Sarang V. Kotwal, J

1. This is a Petition for quashing of the F.I.R. dated 4th May 2012 registered vide C.R. No.11 of 2012 under Section 12 of the Prevention of Corruption Act, 1988 ("PC Act") at Anti-Corruption Bureau, Mumbai by one Anil Sardal resulting in A.C.B. Special Case No.60 of 2013 pending before the Special Court for A.C.B., Sessions Court at Greater Bombay. The prayer is for quashing of this particular case. The second prayer is, for direction to the trial Court to appoint a competent officer to conduct an enquiry into the missing currency notes amounting to Rs.10,000/- (Rupees Ten Thousand) which was seized by the prosecution and sealed in an envelope.

2. Heard learned counsel Mr. Mahesh Vaswani for the Petitioners and learned APP Smt. M.H. Mhatre for the Respondents-State.

3. At the very outset, it must be stated, that the trial has progressed. PW No.1 –

Complainant was examined but he has passed away. At present, PW No.2 – Panch is in the witness-box. His evidence is being recorded and he is being cross-examined. At this very late stage, the Petitioners have approached this Court challenging the entire proceedings. Learned counsel for the Petitioners insisted on deciding this Petition inspite of the fact, that the trial has progressed considerably. He made three basic submissions. His first submission is, that since the Complainant has passed away, the F.I.R. cannot be proved and the allegations made by him cannot be proved. The second submission is, that the currency-notes which were seized at the time of raid, were not found when the envelope was opened in the Court when the Panch was under examination. Therefore, he submitted, that the crucial property involved in this case is not before the Court and therefore, the offence cannot be proved. His third submission is, that the offence under Section 12 of the PC Act does not stand on its own unless the ingredients of Section 11 are proved by the prosecution.

4. Learned APP, on the other hand, submitted that there is ample other material in the entire charge-sheet showing the complicity of the Petitioners in the entire offence. The trial has progressed considerably and at this stage, it is not permissible to quash the proceedings under Article 226 of the Constitution of India. She submitted, that the currency-notes which were seized during the trap, were deposited with the Reserve Bank of India during the demonetization period. She produced a copy of the order passed below Exhibit-1 in A.C.B. Special Case No.60 of 2013 before the Special Judge (under the Prevention of Corruption Act), Greater Mumbai. That copy is taken on record and marked "X" for identification. This order reads thus:-

"In view of the Government Gazette No.2652 dated 08/11/2016 issued by the Government of India and the circular issued by the Hon'ble Principal Judge, Gr. Mumbai, dated 12/11/2016, the consent of parties obtained to deposit the currency notes of Rs.500/- and Rs.1,000/-, these currency notes ceased to be legal tender on account of demonetization. The photocopies of the currency notes seized during the enquiry/investigation be forwarded to Registrar (S) along with the V.P.R. containing currency notes of Rs.10,000/- of denomination of Rs.500/- and Rs.1,000/-.

The photocopies of the currency notes which are already filed in the present charge-sheet will operate as a piece of evidence subject to proving the same as per provision of law.

Sheristadar of the Court to comply with the said order.

V.P.R.No.

270/2015

Notes of denomination

No. of Notes

Value

Rs.1,000/-

1000X2

2000

Rs.500/-

500X16

8000

Rs.100/-

Rs.50/-

Total

10,000/-

Date : /12/2016.

(A.D.Tankhiwale)

Special Judge (Under the P.C. Act)

Greater Mumbai."

The copy of the said order is given to the learned counsel for the Petitioners in the Court today. She submitted, that the ingredients of Section 12 are clearly made out and there is no scope for even arguing that the proceedings can be quashed.

5. In response to these submissions, learned counsel submitted, that the said order which is produced before the Court is undated and that he had never consented as a counsel for the Petitioners at the trial for such course of action.

6. We have considered these submissions and we have perused the entire charge-sheet. The F.I.R. was lodged by Anil Sardal on 4th May 2012. He has stated that, at the time of lodging of the F.I.R., he was working as Police Inspector at Shivadi Police Station since July-2010. There was a dargah named Sayyad Ali, Mira Datar Dargah within his jurisdiction. In August-2011, the Petitioner No.1 Nazim Yusuf Shaikh and others had made a complaint in the Police Station that the articles belonging to the dargah were stolen. The complaint was against one of the trustees Hanif Nalkhande. The F.I.R. mentions that Hanif on the other hand had made various complaints against the Petitioner No.1 Nazim. The F.I.R. goes on to mention that the Petitioner No.1 Nazim used to frequently visit the Police Station and used to enquire with the First-Informant as to whether the Police had registered any offence. The Petitioner No.1 approached the Court of Additional Chief Metropolitan Magistrate, 5th Court, Dadar for the same allegations of theft for seeking investigation under Section 156(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C."). The Court had passed those orders in March-2012. An MECR

was registered under Section 380 read with 34 of Indian Penal Code, 1860 ("IPC") on 21st April 2012. At that time, the Petitioner No.1 had attempted to give bribe of Rs.10,000/- (Rupees Ten Thousand) to the First-Informant. But, the informant did not accept it. The investigation was carried out by the informant in respect of the said M.E.C.R. It was revealed that the articles were in possession of the trustees and they had sent it to the scrap dealer. They had deposited the amount in the bank account. This was the statement given by the accused in that case one Nalkhande. At the conclusion of the investigation, the informant reached the conclusion that the offence was false. After registration of M.E.C.R. 1 of 2012, the Petitioner No.1 came to the Police Station within four to five days and met the informant. He told the informant that since the informant had registered the M.E.C.R., he was willing to pay Rs.10,000/- (Rupees Ten Thousand) to him. The Petitioner No.1 kept Rs.10,000/- on the informant's table but the informant did not accept it and therefore, the Petitioner No.1 took it back and went away.

7. Even after that, the Petitioner No.1 frequently contacted the informant and used to tell him that he wanted to give something to the informant. The informant got fed up. He did not want to accept the bribe. Therefore, on 3rd May 2012, he approached the Office of Anti-Corruption Bureau and gave a written complaint against the Petitioner No.1.

8. On 3rd May 2012, in the presence of the API – Kulkarni, the Petitioner No.1 was contacted telephonically when he told the informant that he would meet the informant on 4th May 2012. On that date i.e. on 4th May 2012, two panchas were arranged. The Petitioner telephonically told the informant that he would meet the informant at 4.45 p.m., in his Office. Accordingly, informant went to his own Office. The Petitioner No.1 was already present there. He had brought Rs.10,000/- (Rupees Ten Thousand) to pay as bribe. But, the informant did not accept it. The Petitioner No.1 told the informant that he would come on the next date i.e. on 5th May 2012 at 10.00 a.m. This particular conversation was recorded on a digital recorder. On this basis, the F.I.R. was lodged.

9. The Complainant's supplementary statement then unfolds the further events. On 5th May 2012, the Petitioner No.1 as well as the Petitioner No.2 came to the informant's Office. The Petitioner No.1 took out an envelope and gave it to the Petitioner No.2 and asked the Petitioner No.2 to hand it over to the informant. The informant did not accept it. Therefore, the Petitioner No.2 kept that envelope on the informant's table and then started discussing their case. The informant contacted API – Kulkarni on his mobile phone and gave a signal. The raiding party entered the informant's office and apprehended both the Petitioners. The Petitioner No.2 started saying that he had committed a mistake and the matter should be settled then and there. The Petitioner No.1 also repeated the same. Both of them were apprehended. The currency-notes were seized. Their numbers were noted down. There were two currency-notes of rupees thousand and there were sixteen currency-notes of rupees five hundred.

The trap-panchnama was recorded and the investigation was carried out.

10. The charge-sheet contains the transcript of the conversation between the informant and the Petitioner No.1. The transcript in respect of the conversation of 4th May 2012 clearly mentions that the Petitioner No.1 had told the informant that they would pay upto rupees twenty to the informant. The Petitioner No.1 added that he was referring Rs.20,000/- (Rupees Twenty Thousand). He said that they were giving that amount on their own. Further conversation mentions that he was paying money to the extent that the informant would not be disappointed.

11. The trap-panchnama itself records as to how the Petitioners had entered the informant's office and as to how, the money was kept on the table to pay it as bribe. It also records the numbers on the currency-notes as mentioned earlier. The conversation during that trap between the informant and the Petitioner No.1 was also recorded in the recorder. It is clearly mentioned by the Petitioner No.1 that it was the amount of Rs.10,000/- (Rupees Ten Thousand). The photocopies of the currency-notes also form part of the charge-sheet. There was voice sample recording panchnama. There are statements of the members of the raiding party who have narrated the entire incident of trap. There are panchnamas. In short, there is overwhelming evidence against the Petitioners which the prosecution can prove during the trial. Just because the Complainant is not available anymore, that does not mean the prosecution does not have any other witnesses to prove their case. There are raiding party members, there are panchas, there is a transcript of the conversation showing offer to pay bribe, there is a recovery of currency notes. All these circumstances and the oral evidence can be proved through different witnesses. Therefore, there is no force in the submission that since the Complainant has passed away, the offence cannot be proved.

12. As far as the submission that, the currency notes were not available during the trial, is concerned; learned APP has produced the order passed in the case as mentioned earlier. We are satisfied that the currency-notes were deposited with the Reserve Bank of India as submitted by learned APP. The photocopies of the currency-notes are already part of the charge-sheet and therefore, it is not difficult to prove the numbers on the currency-notes which can be found from the photocopies.

13. Other submission of learned counsel was regarding Section 12 of the PC Act. The Section 12 as it stood at the time of the offence reads thus:-

"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 not be less than three years but which may extend to seven years and shall also be liable to fine."

In this case, clearly the Petitioner No.1 had attempted to give bribe to the

informant. The Petitioner No.2 has actively participated during the trap in keeping the envelope on the table. It would squarely fall within the meaning of Section 12. The informant on his part did not want to accept any bribe and therefore, as far as the Petitioners are concerned, their act squarely falls within the meaning of Section 12 of the PC Act. The public servant in this case i.e. the First-Informant had refused to accept the bribe. In these circumstances, there is nothing wrong in prosecuting the Petitioners under Section 12 of the PC Act. It does not depend on ingredients of Section 11 of the Prevention of Corruption Act; because Section 12 itself clarifies that offence under Section 12 is complete whether the offence referred to in Section 12 i.e. Section 7 or Section 11 is actually completed or not.

14. The prosecution needs to be given full opportunity to lead evidence in this case. The proceedings cannot be quashed at this stage at all.

15. In view of this discussion, we do not find any merit in the Petition and the Petition is accordingly dismissed.