

(2016) 04 BOM CK 0178

In the Bombay High Court

Case No : Criminal Revision Application No. 67 of 2013.

Prakash S/o. Murlidhar Bhishikar, Aged about 70 years, Occupation : Retired, Resident of Plot No.260, "Parmanand", West High Court Road, Nagpur - Applicant @HASH State of Maharashtra, through Deputy Superintendent of Police, Anti Corruption Bureau, Buldan

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227

Citation : (2016) ALLMRCri 4758

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri S.S. Voditel, Advocate, for the Applicant; Shri S.S. Doifode, A.P.P, for the Non-Applicant

Final Decision : Allowed

Judgement

Z.A. Haq, J. (Oral)—Heard learned advocates for the respective parties.

2. RULE. Rule made returnable forthwith.

3. The applicant has filed this revision application challenging the order passed by the Special Judge rejecting the application filed by the applicant praying that he be discharged from the prosecution for the offences punishable under Sections 465, 466, 471, 477A, 120B and 109 r/w 34 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

4. The relevant facts are as follows :

The applicant was posted as Collector, Buldana from 1993 till 1996. On 2nd July, 1990 Malkapur Education Society, Malkapur had submitted an application to the office of the Sub-Divisional Officer, Malkapur and Tahsildar, Motala requesting that the land admeasuring 0.74 hectare, situated adjacent to the property of the society, be allotted to it for use as playground. The then Naib Tahsildar processed the application, conducted enquiry and after receipt of report of Talathi, Motala

and grant of no objection by Gram Panchayat, Motala submitted report to the Sub-Divisional Officer, Malkapur. The then Sub-Divisional Officer endorsed his note and forwarded the proposal to Collector, Buldana. The proposal was examined by the then Resident Deputy Collector, Buldana and it was forwarded to Collector, Buldana. The applicant, who was Collector, Buldana at that time scrutinised the record submitted to him and considering the provisions of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 allotted the land by the order dated 27th September, 1993 to the Malkapur Education Society for its use as playground, for the period of 15 years on nominal rent of Re.1/- per year.

The case of the non-applicant/State of Maharashtra is that the concerned land was taken over by the Ministry of Defence by the communication dated 20th June, 1950 and therefore, the land belonged to the Central Government and the applicant in his capacity as Collector, Buldana could not have allotted the land on lease. According to the non-applicant, the allotment of land on nominal lease amount of Re.1/- per year has resulted in financial loss to the State Government. On the above allegations the prosecution is launched against the applicant for the offences punishable under Sections 465, 466, 471, 477A and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988. The applicant filed an application (Exh.70) under Section 227 of the Code of Criminal Procedure praying for discharge. This application is rejected by the impugned order.

5. The learned advocate for the applicant has pointed out that the entries in 7/12 extract showed the land as "F" class belonging to the State Government. According to the applicant, the old record of rights showing that the land belong to Ministry of Defence, Government of India was not part of the record placed before him along with the proposal of Malkapur Education Society. According to the applicant, he acted as per the established practise of the Revenue Department and relied on the entries of 7/12 extract while considering the proposal of Malkapur Education Society. The learned advocate for the applicant has referred to Rule 7 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 and has submitted that the applicant has acted in consonance with the above referred Rule and had granted lease of the land to the education institution for 15 years for using the land as playground, on nominal rent of Re.1/- per year. The learned advocate for the applicant has pointed out that Malkapur Education Society had submitted the application for allotment of land on 4th September, 1973, 8th August, 1980 and 2nd July, 1990 and the Gram Panchayat had passed resolution in favour of the Society on 29th November, 1990 and the accused No.4-R.S. Narkhede was posted as Naib Tahsildar, Motala from 19th December, 1989 till 30th April, 1992 and the applicant was posted as Collector, Buldana from 29th May, 1993 and the order of allotment of the land was issued on 27th September, 1993 and in view of these facts, it cannot be said that there could have been any criminal conspiracy by the applicant and R.S. Narkhede-accused No.4 regarding allotment of land to

Malkapur Education Society. It is submitted that the prosecution has not been able to show that the ingredients of offences alleged to have been committed by the applicant exist so as to continue the prosecution against the applicant.

Shri S.S. Voditel, advocate has emphasised on the fact that though it is alleged that the allotment of the land on lease of 15 years on nominal rent of Re.1/- per year has resulted in substantial financial loss to the State Government, the Government of Maharashtra did not take any steps to revoke the order of allotment of land and though the period of 15 years of lease came to an end in 2008, the land continued with the society till filing of the present application in 2013. It is argued that in these facts, it cannot be said that any loss is caused to the State Government because of the order issued by the applicant. It is further submitted that the applicant has issued order allotting the land on lease, in discharge of his official duties and even if some error is committed while issuing the order, it cannot be said that the applicant has committed the offence.

It is prayed that the impugned order be set aside and application (Exh.70) filed by the applicant be allowed and the applicant be discharged from the prosecution for the offences punishable under Sections 465, 466, 471, 477A and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

6. The learned Additional Public Prosecutor has submitted that the revenue record showed that the land in question was of "F" class and the Gram Panchayat, Motala had no concern with the land and therefore, the resolution passed by the Gram Panchayat, Motala in favour of the society, was irrelevant. It is submitted that the record of rights showed that the concerned land belong to Ministry of Defence, Government of India and was reserved for camping ground of defence. It is submitted that the entry to this effect is also taken in 7/12 extract of the concerned land. The learned APP has submitted that Shri V.K. Date, earlier Collector Buldana had endorsed his remarks on the file that the concerned land is reserved for camping ground for military purposes. It is submitted that the applicant misused his authority and issued illegal order allotting the land to the society which has caused substantial loss to the State Government. It is submitted that there is sufficient material on the record to prosecute the applicant and the learned Special Judge has rightly considered all the aspects and rejected the application (Exh.70). It is submitted that the impugned order is proper and does not require interference.

7. The learned advocate for the applicant has submitted that the fallacy in the submission of the non-applicant is patent on record. The non-applicant alleges that the concerned land belongs to the Ministry of Defence, Government of India. It is not understood as to how the State Government can allege that the allotment of land on lease for 15 years has resulted in huge financial loss to the State Government. It is prayed that the revision application be dismissed.

8. It is the specific case of the applicant that he has issued the order of allotment

of the land in discharge of his official duties, after scrutinising the documents placed on the record and the 7/12 extract which did not show that the land belong to the Ministry of Defence, Government of India. Though it is submitted on behalf of the non-applicant that the entry has been taken in the 7/12 extract of the concerned land that it is reserved for camping ground of defence, it is not pointed out when the entry is taken. The applicant has stated that 7/12 extracts of 1980 and 1990 showed that the concerned land belonged to the State Government. Except for the contention that the entry is taken in 7/12 extract showing that the concerned land is reserved for camping ground for defence, there is nothing on the record to show that the documents placed before the applicant at the time when he issued order of allotment of the land contained 7/12 extract showing entry that the land was reserved for camping purposes by the defence.

9. The allegation that allotment of land on lease on nominal rent of Re.1/- per year has resulted in huge financial loss to the State Government, cannot be accepted as rule 7 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 provides for grant of lease for playground to education institutions for 15 years on nominal rent of Re.1/- per year. Moreover, if at all the allotment made by the applicant was illegal, superior authorities and the State Government could have revoked the order of allotment. It goes unexplained as to why the allotment was not cancelled. Not only this, the applicant has stated on oath that though the allotment of land was till 2008 the land continued to be in possession of the education society till 2013 and this is not controverted by the non-applicant. Further, I find, that the submission made on behalf of the non-applicant that the allotment of land on nominal rent of Re.1/- per year has resulted in huge loss to the State Government is fallacious. It is the contention of the non-applicant that the concerned land belong to Ministry of Defence, Government of India. In the background of this contention, how it can be said that the allotment of land on nominal rent of Re.1/- per year has resulted in huge loss to State Government. In these circumstances, it is difficult to accept the contention of the non-applicant that huge financial loss is caused to the State Government because of the allotment of the land on nominal rent of Re.1/- per year.

10. The learned Special Judge has not adverted to the relevant aspects, specially as to whether the accusations made against the applicant make out the offences for which he is being prosecuted. The learned Special Judge has observed that the prosecution alleges that the applicant has acted dishonestly while taking decision, has followed corrupt practices and has caused wrongful loss to the State Government and these aspects cannot be considered unless the evidence is recorded. The learned Special Judge has observed that the prosecution has adduced sufficient oral and documentary evidence on record, which make out prima-facie case and therefore, the applicant cannot be discharged. With the above general observations, the application is rejected by the learned Special Judge. I find that the learned Special Judge has not considered the matter in the

right perspective and has not adverted to the relevant aspects.

11. In my view, the prosecution has failed to establish that the ingredients necessary to prosecute the applicant for the offences punishable under Sections 465, 466, 471, 477A and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 exist. Therefore, the prosecution against the applicant for the above offences cannot be continued and he has to be discharged from the prosecution.

12. Hence, the following order :

- i) The order passed by the learned Special Judge in Special (ACB) Case No. 2 of 2003 on application (Exh.70) on 25th September, 2012 is set aside.
- ii) The application (Exh.70) filed by the applicant is allowed.
- iii) The applicant is discharged from the Special (ACB) Case No. 2 of 2003, pending before the Special Judge, Buldana.
- iv) Rule is made absolute in the above terms.
- v) In the circumstances, the parties to bear their own costs.