IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 91 OF 2015

KESHAVRAO VISHWANATHRAO AUTADE

V/S

THE STATE OF MAHARASHTRA

WITH

CRIMINAL WRIT PETITION NO. 92 OF 2015

KIRAN S/O ASHOKRAO PATIL DONGAONKAR
AND ORS.

V/S

THE STATE OF MAHARASHTRA

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Mr.A.S.Barlota, Advocate for Petitioners

Mr. VD.Godbharle, A.P.P. for Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE : 3rd MARCH, 2015

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ORDER :

1. These two Writ Petitions can be decided by this common order since they arise out of the order dated

06/12/2014 below Exh. 184 in Special Case No. 3/2012 passed by the learned Special Judge [Prevention of Corruption Act], Aurangabad.

2. The petitioner in Criminal Writ Petition No. 91/2015 is accused No. 8, whereas the petitioners in Criminal Writ Petition No. 92/2015 are accused No. 10 and accused No. 12 in the charge sheet filed before the Court.

3. Heard Mr. A.S.Barlota, the learned counsel for the petitioners and Mr. V.D.Godbharle, the learned A.P.P. for the respondent – State in both the Writ Petitions.

4. The sum and substance of the argument of the learned counsel for the petitioners is that there is no material, whatsoever in nature, against any of the petitioner, even if the face value of the entire charge sheet and the documents filed on record are taken into consideration.

5. First Information Report [hereinafter referred as 'F.I.R.' for the sake of brevity] was lodged with police station Kranti Chowk, Aurangabad on 20/05/2007 by the Dy. Superintendent of Police, Anti Corruption Bureau, Aurangabad. The said F.I.R. was recorded as Crime No. I-192/2007 for the offence punishable u/s 465, 468, 471, 120 (b) of the Indian Penal Code and u/s 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

6. During the period from 15/10/2001 to

28/01/2002, recruitment scam occurred at Aurangabad District Central Co-operative Bank, Aurangabad. Accused Nos. 8, 10 and 12 were the Directors of the said Co-operative Bank during the disputed period.

The gist of the allegation in the said recruitment scam is that while allotting marks to the aspiring candidates to secure employment to the post of Clerks and Peons, over writings were made and thereby allowed the unqualified candidates to secure job, as if they are qualified and deprived the eligible candidates as ineligible.

7. After completion of the entire investigation, charge sheet is filed vide charge sheet No. 47/2012 on 15/02/2012 against the present petitioners and others. The case is allotted to the Special Court vide Special Case No. 3/2012.

8. The petitioners in these two Writ Petitions filed application u/s 227 of the Code of Criminal Procedure for discharge. The application was opposed by the prosecution by filing reply at Exh. 203. The learned Judge of the Special Court rejected the application for discharge [Exh. 184] filed by the present petitioners vide Order dated 06/12/2014.

9. The charge sheet shows the accusation in so far as the petitioner in Criminal Writ Petition No. 91 of 2015, who is accused No. 8, that he has recommended name of Sanjay Pandurang Lembhe, who was not registered with Employment Exchange. It is also alleged that, in so far as Subhash Nana

More is concerned, who was also one of the candidates, certain over writings are made in the marks obtained by this candidate. These two candidates were not eligible to secure employment with the Bank. Thus, the petitioners in collusion and conspiracy with other accused persons, permitted these two candidates to obtain the job.

10. In Criminal Writ Petition No. 92 of 2015, petitioner No. 1 is accused No. 10 and petitioner No. 2 is accused No. 12.

11. In so far as petitioner No. 1 [accused No. 10] is concerned, he has recommended name of Sanjay Jairam Kusher, who was not registered with the Employment Exchange. This candidate was ineligible to secure employment in the said Bank. In spite of that, the job was given to this candidate.

Another allegation against this petitioner is that he has demanded ₹ 3,00,000/- [Rupees Three Lacs] from witness Kailash Ramnath Gaikwad and since the said amount was not given, the employment was not given to the said person.

Similarly, the father of the petitioner No. 1 demanded ₹ 3,00,000/- [Rupees Three Lacs] from candidate Sanjay Natha Dubile. However, he was unable to pay such amount and, therefore, the said person was not given employment. Their statements show that these persons were eligible to secure the job with the Bank. However, as they could not fulfill the demand, they were not given employment.

The charge sheet shows that specimen signature of petitioner No. 1 [accused No. 10] was obtained during the course of investigation. The said natural signature was sent to hand writing Expert along with disputed documents. After examination, the hand writing Expert has given opinion that the signatures on the disputed documents are of petitioner No. 1 [accused No. 10].

12. Similarly, the petitioner No. 2 in Criminal Writ Petition No. 92 of 2015, who is accused No. 12, has recommended name of Smt. Rohini Mangalraje Rajendra and on his recommendation, employment is given to her to the post of Clerk. This candidate was also not registered with Employment Exchange and was ineligible to secure the employment.

During the course of investigation, the signature of this petitioner was also obtained and was sent to the hand writing Expert along with disputed document and the hand writing Expert has given opinion that the signature on the disputed documents belongs to petitioner No. 2 [accused No. 12].

13. The learned trial Court while considering the application for discharge, in my view, has correctly recorded finding that direct evidence of conspiracy is rarely available. The charge sheet shows that ingredients of the other offences exist against the present petitioners.

14. Further, the status of the petitioner being

Directors of the said Co-operative Bank at the relevant time is not at all in dispute.

15. At the stage of framing of Charge, it is not expected as to whether the material collected and produced by the prosecution is sufficient to convict the accused persons. Courts are not expected to deeply evaluate the prosecution evidence at this stage. Only *prima facie* case is to be seen. Whether the case is beyond reasonable doubt is not to be seen at this stage.

16. The material which is available against the petitioners, as discussed above, clearly shows that sufficient material is available against each of them for trial. In that view of the matter, I see no reason to interfere with the order passed by the learned Special Judge, Aurangabad in rejecting the application for discharge.

17. Consequently, both the Writ Petitions fail and hence are dismissed.

[V.M.DESHPANDE, J.]

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