

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CRIMINAL WRIT PETITION NO. 890 OF 2014

HIRENDRA RITADHWAJKUMAR TIWARI
VERSUS
NARENDRA GAJANAN BORIKAR

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Advocate for Petitioner : Mr. Mahesh Deshmukh,
Advocate h/f Mr. Sagar S. Phatale .
Advocate for Respondent No.1: Mr. S. A. Kulkarni.
APP for Respondent No.2: Mr. P. N. Mule.

CORAM: T. V. NALAWADE, J.
DATED: 22nd JUNE, 2015.

PER COURT:

1. The petition is filed to challenge the judgment and order of Criminal Revision No.143 of 2014 which was pending in the Court of Additional Sessions Judge, Bhusawal. In the revision, the order of issue process was challenged by present Respondent on the ground that there was no sanction as required under section 197 of Cr.P.C. The Sessions Court has set aside the order of issue process made in respect of the offences punishable under sections 166, 167 and 500 of I.P.C. The original

complainant has challenged the decision in Revision. Both the sides are heard.

2. Present Petitioner, the complainant was working as T.T.E. On 28th July, 2003 he charged group of 12 foreigners, Spanish passengers with the fine of Rs.41,028/- on the ground that there was no passenger list with the special tickets they were carrying when on the ticket there was the remark as "passenger list attached". There was publicity given in respect of this action and question was also raised in Parliament regarding the conduct of present petitioner, complainant. In the year 2003 itself the department observed that it was a serious misconduct and the imposition of penalty on flimsy ground without verifying passengers list published, was illegal and it had caused damage to the reputation of Railway administration. Inquiry Officer was appointed. At the relevant time, accused, present Respondent was not posted at Bhusawal but he came to be posted there in the year 2006, on the post of ACM (ADMR). The inquiry report was placed before present accused, respondent and after following the procedure for imposition of major

penalty, he passed the order of reversion to a lower post.

3. The aforesaid order made in departmental inquiry was challenged by the present petitioner before C.A.T. and he succeeded there. This decision was taken to Supreme Court but Special Leave Petition was dismissed by the Supreme Court.

4. Present petitioner then filed private complaint on 23rd August, 2012 for aforesaid offences. Learned J.M.F.C. considered mainly the record of departmental inquiry and observations made by C.A.T. The point of sanction was considered by J.M.F.C. and order of issue process was made. Learned Additional Sessions Judge has held that it was necessary to obtain sanction under section 197 of Cr.P.C. as the accused was discharging the duties as public servant.

5. The learned counsel for the petitioner, complainant placed reliance on the case of “**Choudhury Parveen Sultana V/s State of W.B. and anr.**” reported in **AIR 2009 S.C. 1404**. In this case the Apex Court has observed that the act done in discharge of official duty does not include cases of abuse of power. The facts of the case were totally different and there was allegation

against investigating officer that he had used force for obtaining signatures on blank papers which were to be used as statements and investigating officer wanted a tutored statement from the witness. Private complaint was filed and the process was issued for offences under section 384 and 506 of Indian Penal Code. In view of this circumstance and the allegations, the Apex Court made such observations.

6. The facts of the present case are altogether different. Due to the aforesaid incident, question was raised in Parliament and the incident was published in newspaper. Before the posting of present accused at Bhusawal the departmental inquiry was ordered and only the report of inquiry officer came before the present accused. He passed final order in the departmental inquiry and imposed aforesaid penalty.

7. It appears that the learned J.M.F.C. has given much importance to the observations made by C.A.T. It appears that before inquiry officer the relevant rules were not pointed out by the department of which there was the breach from the delinquent and such rules were not pointed out to C.A.T. also. However, C.A.T. held that

the appointing authority of the delinquent was D.R.M. and not A.D.R.M. and only D.R.M. could have imposed penalty. It needs to be kept in mind that it was the charge against the delinquent that on flimsy grounds and without verifying reservation chart in which there are the names of passengers, penalty was imposed. It was submitted in this proceeding for the accused that this action of the delinquent was outside of the local jurisdiction given to him and that was also the circumstance against him. Though the complainant got exoneration, aforesaid circumstances show that there was grievance against the complainant and so departmental inquiry was started against him and that too prior to taking of the charge of the post of A.C.M. by present accused.

8. There was one more circumstance on the basis of which the delinquent is exonerated and that is the competency of the accused to impose the penalty. It is already observed that when the accused came to Bhusawal, report of inquiry came before him and after that he followed the further procedure and imposed the penalty. In view of these circumstances, it needs to be

presumed that the accused was apparently discharging his duties as a public servant and whatever was done by him was in discharge of his official duty. It was up to the department to find out as to whether the accused had some malice and he had misused or abused the power. Unless such opinion is formed by the department, criminal action cannot be taken against the accused. If in a case like present one, such procedure is not followed, the provision of Section 197 Cr.P.C. will become useless and public servants may not be able to act fearlessly while discharging the duties. This Court has no hesitation to hold that in view of the facts and circumstances of the case it was necessary to obtain sanction under section 197 of Cr.P.C. and as the cognizance was taken before such sanction, the order of issue process cannot sustain in law. This is not a fit case to interference in the decision given by Sessions Court. In the result, the petition stands dismissed.

[T. V. NALAWADE, J.]

Dt.22/06/2015
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