

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 APPLICATION NO. 4367 OF 2015
IN WP/1274/2014

SAU MANGALA RAJESH KOTHARI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Malte Uday S.

CORAM: T. V. NALAWADE, J.
DATED: 19th OCTOBER, 2015.

PER COURT:

1. The proceeding is filed for recalling the judgment and order of Criminal Writ Petition No.1274 of 2014. This Court, by decision dated 14th July, 2015, allowed the writ petition, set aside the decision of Criminal Revision No.2 of 2013 by which the relief of discharge was given to present Applicant Sau. Mangala Kothari, who is a practicing Advocate.

2. Heard learned counsel for the Applicant. The same counsel had argued the aforesaid writ petition for the present applicant. It is the case of the applicant that the

matter was not listed on 14th July, 2015 for final disposal but the matter was finally disposed of by this Court. It is also contended that the Advocate of the present Applicant had not given consent for final disposal. It is contended that only when the Advocate read the entire text he realised that the matter was decided on merits. It is contended that the principles of natural justice were not followed. In support of this contention, the present Advocate, who had appeared in the past, has filed affidavit.

3. It needs to be mentioned that the present matter was decided on merit and so the provision of Section 362 of Criminal Procedure Code will come in the way of this Court and for this single reason also the decision cannot be recalled.

4. This Court deems it necessary to quote the portions from the decision in writ petition, which contained the facts and reasoning for mentioning the nature of matter. It is as under:

“(2) The petition is filed by the State to challenge the judgment and order of Criminal Revision Application No.2/2013 which was

pending in the Court of Additional Sessions Judge, Kopargaon, District Ahmednagar. The Sessions Court has discharged present respondent in a police case filed for the offences punishable under sections 420, 468, 471, 34 etc. of Indian Penal Code. It can be said that Section 120-B of I.P.C. also can be used. Both the sides are heard.

3. The crime was registered on the basis of report given by one Police Officer, A.P.I. Some incidents of creation of false record for filing claim petitions under the provisions of Motor Vehicle Act were noticed in the Tribunal from Kopargaon. There were 15 such incidents. Inquiry was made by learned Additional District Judge, Kopargaon and he found that forged record of police papers was created by using some crime numbers and by using tricky zerox. In some cases by personification, the claims were filed by persons who were not real victims or relatives of victims of the accident. In some cases, false record of cause of death and injury

certificate was created. Even when the death had taken place due to burn injuries and not in motor vehicle accident, false record of death in motor accident was created. It was noticed that in some cases, by filing such false claims, the amount awarded by the Tribunal was also withdrawn. Due to direction given by the higher police officers, investigation was made in to these 15 incidents and then F.I.R. was given by A.P.I. The number of these claim petitions are given in the police case, in which false record of aforesaid nature was created. It was noticed that one Nandkumar Khichhi and Advocate Smt. Mangala Kothari had come together in aforesaid matters and Advocate Mangala Kothari had filed those 15 cases.

4) During investigation, statements of witnesses came to be recorded which include the statements of some claimants from whom signatures were obtained on blank papers and they were used for filing the claim petitions. Promise was given to them to give some

amount after getting the order of tribunal and so, they had signed on the documents and that is how false claim petitions could be filed and petitions could be filed in the names of some persons. Statements of police officers of the concerned police station are recorded and the concern record is collected to show that the record produced in the claim petitions was forged record and there was no such record created in those crimes which were actually registered in the police stations. Thus, they worked as racket as per the case of the State.

5) It appears that in discharge application, present respondent/ advocate contended that she acted on the basis of record supplied to her and she was not involved in creation of false record. The application was opposed. The learned Sessions Judge gave order of discharge by observing that the record was used in a proceeding filed in tribunal and so, only Court could have given the complaint and it was not open to the police machinery to file the

chargesheet. The learned Additional Sessions Judge has referred the provision of section 195 (1) (b) (ii) of Cr. P.C. and the case of the Apex Court reported as **1983 Supreme Court Cases (Cri) 822 [Gopalkrishna Menon and Anr. Vs. D. Raja Reddy and Anr.]** is referred.

6) The learned APP placed reliance on the case reported as **AIR 2005 SC 2119 [Iqbal Singh Marwah Vs. Meenakshi Marwah]**. In this case, the Apex Court has considered the provisions of sections 195 (1) (b) (ii) and section 340 of Cr.P.C. It is laid down by the Apex Court that the bar is applicable only when the forgery is committed in the documents which are already produced on the record. In that case, a will was produced in the Court which was already allegedly forged. In the present case also, there are allegations of aforesaid nature and at this stage, it cannot be said that false record was created in the Court. It can be said that in some cases by using the false record, order of compensation was obtained and

compensation was also collected. This will be additional circumstance for taking further action and that can be done by the Court. But the fact remains that cognizable offence of creation of false record was already committed. The aforesaid provision of section 195, does not control the power of police to make investigation when cognizable offence of aforesaid nature is committed. Thus, the learned Additional Sessions Judge has committed grave error in giving discharge to the accused against whom there is material of aforesaid nature. At this stage, it is not possible to draw inference that the advocate had no reason to have suspicion when one man was producing the record of aforesaid nature before her and she was preparing the proceedings, she was identifying the claimants and she was filing the proceedings in the tribunal and in atleast two cases she saw that compensation granted was withdrawn. In view of the nature of allegations, which are already discussed, such

defence atleast at this stage cannot be accepted."

5. The aforesaid portion of the judgment shows the seriousness of the matter. The instances of creation of false litigation and particularly claim petitions filed under Motor Vehicle Act are increasing day by day and that number has increased to alarming extent. It is a fact that due to heavy work, in many matters, the claimants get the relief of compensation even when the claims are false. Fortunately, and after all the necessary inquiry, action was taken and there are aforesaid circumstances against the Advocate involved, the present applicant.

6. Some times, attempts are made to take orders from Courts by submitting that the party involved is an Advocate. Such strange submissions are made when the Courts are expected to act fairly and without making distinction between a party Advocate and a party who is not an Advocate. The necessary observations for setting aside the decision are already made by this Court in aforesaid writ petition and there was no other alternative before this Court but to give such decision.

7. What is surprising and shocking in the present matter is the conduct of Advocate who represented present applicant in the previous proceeding. It can be said that immediately after hearing of the matter, the decision was given and as per the procedure, this Court must have asked both the sides as to whether they were arguing for final disposal. Only after both the sides consent to it the Court goes for final hearing of the matter and gives the decision. It is not disputed that then and there the decision was pronounced by this Court. The matter was decided on 14th July, 2015 but the present matter came to be filed on 13th August, 2015. This single circumstance is sufficient to infer that the contentions of the Advocate and his party are afterthought. It is unfortunate that the Advocate who was appearing for present Applicant in the matter in the past and who is appearing in the present matter has gone to the extent of filing affidavit. He cannot be believed. In such cases even action can be taken against the Advocate for taking such stand. This Court is avoiding to take such action against the Advocate as this is the first instance of this Advocate which has come to

the notice of this Court. As there is no possibility of recalling the previous order or indirectly review, the application stands dismissed.

8. Learned counsel for the Applicant requested for stay. Stay refused.

[T. V. NALAWADE, J.]

Dt.19/10/2015
ans/4367