

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1160 OF 2015

Sow. Parvatabai w/o Raibhan Patil,
Age 73 years, Occu. Household,
R/o Kasliwal Classic, A-7/1,
Aurangabad

..Petitioner
(Orig. Accused No.37)

Versus

1. The State of Maharashtra
2. Sadashivrao Ambadas Gaike,
Age 69 years, Occu. Agriculture
and Social worker,
R/o Sainagar, N-6 CIDCO,
Aurangabad

..Respondents

Mr S.K. Barlota, Advocate for petitioner
Mrs M.A. Deshpande, A.P.P. for respondent No.1
Mr V.D. Sapkal, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 26th October 2015

PER COURT

Heard.

2. The present petitioner is accused No.37 in Special Case (ACB) No.18 of 2012, registered against the petitioner for the offence punishable under Sections 408, 420, 465, 468, 471, 477-B read with Sec.34 of the Indian Penal Code. The prosecution case in brief as against the petitioner is, so as to promote the sugarcane growing in the area in which the petitioner was residing, the State Government sponsored a pilot scheme to be implemented by the District Central Co-operative Bank, who in turn make available the financial aid to the respective sugar factories and the respective sugar factories provide finance to its members so as to increase the yield of sugarcane.

3. In the implementation of said scheme since certain criminal angle was noticed as regards misutilisation, a complaint case was filed, as there was mismanagement of about Rs.3.11 Crores. The above referred case has further resulted into registration of Crime No.89 of 1999 and it is claimed by the petitioner that her name was not part and parcel of the first information report. The investigation was transferred to State C.I.D., which submitted report under Section 169 of Cr.P.C. which was accepted by the learned Judicial Magistrate, First Class, Gangapur, however, the learned Additional Sessions Judge, Aurangabad in Revision No.113 of 2003, vide order dated 23rd August 2004 set aside the acceptance of 'C' summary report and directed the Judicial Magistrate, First Class, Gangapur to decide the acceptance report after hearing.

4. Learned Judicial Magistrate, First Class, Gangapur then heard the parties and rejected the 'C' summary report and ordered issuance of process against the accused persons.

5. The trial has set into motion, as the charge is already frame against the accused persons, including petitioner.

6. The petitioner claims that once the learned Judicial Magistrate, First Class has taken cognizance of offence by issuing process against accused Nos.1 to 7, the order of Deputy Inspector General Police, C.I.D. Pune directing re-investigation, was uncalled for. He would then urge that, had it been the case that there was case for re-investigation, it was open for the Magistrate to pass order of re-investigation or further investigation or by the higher Courts.

According to petitioner, as such, the trial based on the subsequent investigation is vitiated and as such, moved application Exh.443 on 17th August 2015 for discharge, as according to petitioner, the proceedings in Special Case (ACB) No.18 of 2012 are vitiated.

7. In support of his contention, learned Counsel for the petitioner has placed reliance upon the judgment of Apex Court in the matter of **Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors.**, reported in **2013 (5) SCC 762** so as to canvass that whether the investigating agency is empowered to carry out investigation when the cognizance was already taken by the competent Court on the basis of Police report under Section 173 of the Cr.P.C.

8. In addition, he would then submit that the investigating agency is not empowered to conduct fresh or de novo investigation in relation to offence for which report is already filed as per Section 173 (2) of the Cr.P.C.

9. The said prayer was objected by the prosecution by giving a detail reply wherein it is pointed that the matter is arising out of Crime No.89 of 1999. It is informed that after the crime was registered with Sillegaon Police Station, same came to be transferred to C.I.D. and final report was submitted on 30th December 2002. It is further claimed that the said report was accepted by the Judicial Magistrate, First Class, however, the revisional Court directed reconsideration thereof resulting into ordering process against the accused persons. It is the case of the prosecution that the Deputy Inspector General of Police has directed re-investigation in the present crime and has

appointed Deputy Superintendent of Police, Aurangabad as Investigating Officer. According to them, there is no illegality in re-investigation. It is claimed that after re-investigation, the charge-sheet is filed, the charge is framed and the trial is set into motion. According to them, once the charge is framed, the stage of discharge in the matter is already over and there has to be acquittal or conviction in the case.

10. Learned A.P.P., while opposing the submissions made by learned Counsel for the petitioner, would urge that the petition is liable to be rejected in view of the fact that the stage at which such prayer is made for discharge is not permissible.

11. Mr V.D. Sapkal, learned Counsel for respondent No.2, while inviting attention of this Court to the judgment of Apex Court in the matter of **Ratilal Bhanji Mithani Vs. State of Maharashtra and ors.**, reported in **AIR 1979 SC 94** would urge that once the charge is framed, the Court has no power, particularly Magistrate under Section 227 or within the scheme of Cr.P.C. to cancel the charge or reverse the proceedings to the stage of discharge i.e. Section 253 of Cr.P.C. He would then urge that it is only before framing of charge, the Court has power to discharge the accused and once the charge is framed and accused has pleaded not guilty, the only option left with the Magistrate is to proceed with the trial which instituted either on the complaint or Police report. In addition, he would also rely upon the judgment of this Court in the matter of **Pramod Narayan Bandekar & Anr., Vs. State of Maharashtra**, reported in **2008 ALL MR (Cri) 2048** to substantiate the above referred submissions.

12. Having bestowed my anxious thoughts over the submissions made, it is required to be noted here that the application Exh.443 is moved by the petitioner on 17th August 2015 seeking discharge/acquittal from the present case on the ground that the trial in the matter is vitiated because of re-investigation ordered by the Deputy Inspector General of Police, State C.I.D. It is further required to be noted here whether such application for discharge is tenable at the stage at which it is moved, particularly when the charge already framed against the petitioner is required to be analysed in the present case.

13. It is an admitted fact that the charge is already framed against the accused by learned Court of Judicial Magistrate First Class and the complainant's examination is already going on. In my opinion, it is not open for the petitioner to move application for discharge, as the same is not within the scope and scheme of Code of Criminal Procedure. Mr Sapkal, learned Counsel for respondent No.2 has brought attention of this Court to the judgment of Ratilal Bhanji Mithani Vs. State of Maharashtra (cited supra), particularly to paragraph 26-A of the said judgment, which reads thus :

“26-A. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed

with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973)."

14. In the light of above, it is required to be noted that the learned Additional Sessions Judge, Vaijapur while dealing with the application for discharge has rightly rejected the application on the ground that the charge is already framed against the petitioner and the other accused persons.

15. It is worth to mention here that the accused persons, instead of proceeding with the trial are trying to delay the proceedings, as is noted by learned Additional Sessions Judge, Vaijapur.

16. In view of above, in my opinion, the application moved by the petitioner is wholly misconceived. The order dated 26th August 2015, passed by learned Additional Sessions Judge, Vaijapur below Exh.443 in Special Case (ACB) No.18 of 2012 is just and proper and does not call for interference. As such, petition fails, stands dismissed.

(N.W. SAMBRE, J.)