

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1274 OF 2014

The State of Maharashtra  
Shirdi Police Station, Dist.  
Ahmednagar

**....Petitioner.  
(Ori. Complainant)**

**Versus**

Sau. Mangala Rajesh Kothari,  
Age 53 years, Advocate,  
R/o. Station Road, Ahmednagar.

**....Respondent.  
(Ori. Accused)**

Mr. S.B. Pulkundwar, APP for State/petitioner.

Mr. U.S. Malte, Advocate for respondent.

**CORAM : T.V. NALAWADE, J.**  
**DATED : 14th July, 2015.**

**JUDGMENT :**

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

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, Kopergaon, 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 Kopergaon. There were 15 such incidents. Inquiry was made by learned Additional District Judge, Kopergaon 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 It was noticed that in some cases, by filing such false claims, the amount awarded by the Tribunal was also withdrawn.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 directions 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 [Gopalakrishna 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.

7) In the result, the petition is allowed. The judgment and order of Criminal Revision Application No. 2/2013 is hereby set aside and the decision of discharge is set aside.

Rule is made absolute in aforesaid terms.

**[ T.V. NALAWADE, J. ]**

SSC/