

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 823 OF 2010

Mrs. Jaya Baban Kadam

... Petitioner.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. S. A. Ingawale a/w. Anand S. Patil, Advocate for the
Petitioner.

Mrs. P. P. Shinde, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 24th FEBRUARY, 2015

P.C. :

1 Heard the learned counsel for the Petitioner and
the learned APP for the State.

2 The Petitioner, at the outset, does not press prayer
clause (a) of the petition. He seeks relief in terms of prayer
clause (aa), which is amended prayer clause. The prayer
clause (aa) is for setting aside the charge framed by the
Special Judge against the petitioner and others for the offences
punishable under sections 120-B, 409, 420, 465, 466, 467,
468,471, 474, 477, 380, 381, 457, 201 read with section 34 of
the Indian Penal Code and also for the offences punishable u/s.

13(1)(d) and 13(2) r/w. Section 109 of the Prevention of Corruption Act.

3 The petitioner is accused no. 22 and wife of the accused no. 5. Accused no. 5 was working as Assistant Commissioner of Police, Mumbai. The case of the prosecution in short is that accused no.5 and accused no. 22 alongwith the other accused had entered into a conspiracy to change the marks of candidates who had appeared for various Examinations in the State including Sales Tax Officers and Police Inspectors. It is also alleged that the record of the office of the Maharashtra Public Service Commission was tampered with by breaking open the lock of the said office and some of the property of the MPSC was stolen by some of the accused in pursuance of the conspiracy. Therefore, sections 457 and 380 have also been applied by the investigating agency.

4 As far as accused no. 22 is concerned, it is alleged that she was a part of the conspiracy and that she had assisted her husband accused no.5 effectively to change the marks in mark-sheets of the candidates and get the unmerited candidates passed in the State Examinations. The learned Advocate for the petitioner has submitted that there is no material to indicate that the petitioner was part of the conspiracy and that she knew the activities of the accused no.5 and other accused. My attention was drawn to the

statement of one Ganesh Manik Rane, who had allegedly paid an amount of Rs.50,000/- on three occasions to the accused no.5 at Jaya Bungalow, jointly occupied by the petitioner and the accused no.5, her husband. It was submitted by the learned counsel appearing for the petitioner that there is no mention of the petitioner in the said statement. The only statement against the petitioner is found in the further statement of said Ganesh Rane, recorded by the police when accused nos. 5 and 22 both were in the police custody. In the further statement of witness - Ganesh Rane it has come on record that the petitioner had assured Rane's father that the work would be done by the accused no.5. The learned counsel submitted that this material has come in the further statement which has been created by the police. It is further submitted that even if it is assumed to be true and correct statement that may not be sufficient to sustain the charge for the offences punishable under sections 120-B or 109 of the IPC r/w. sections 13(1)(d) & 13(2) of the Prevention of Corruption Act.

5 Learned additional public prosecutor Mrs.Shinde has submitted that this is not the only material against the petitioner and that there are various other statements of the bank officers of the Mantralaya Co-operative Bank which indicate that the petitioner was instrumental in opening various accounts in various names including her maiden name and that fixed deposit receipts of huge amounts were

purchased from the said Banks. It is submitted that these amounts were ill gotten money accepted by the petitioner and accused no. 5 from the unmerited candidates whose marks were changed in the mark-sheets.

6 The learned counsel for the petitioner has submitted that a separate FIR was registered against the petitioner and accused no. 5 for the offences punishable under sections 13(1)(e) r/w. section 13(2) of the Prevention of Corruption Act and that after investigation, the investigating officer had submitted a report under section 169 of the Cr.P.C., discharging the petitioner. I am told that the said report has not been considered by the Special Judge so far. In any event that is totally a different issue, which cannot be mixed with the present charges against the petitioner.

7 Learned additional public prosecutor Mrs. Shinde has further submitted that there are Call Data Record of the cell phone, having SIM No. 9869021786 issued in the name of Smt. Jayamala Pilankar, which indicate that there were contacts between the petitioner and other main accused on the said cell phone. The statement of Smt. Jayamala Pilankar recorded by the police disclosed that the cell phone, having SIM No. 9869021786 seized by the police was mainly used by the petitioner. As such it is contended that the petitioner was in touch with many of the prime accused in this case.

The learned additional public prosecutor has submitted that there was no reason for the petitioner to be in touch with the prime accused and have frequent contacts with the said accused when they did not belong to police department. As such according to the learned additional public prosecutor, the court can draw an inference from the Call Data Record that the petitioner was one of the conspirator and that she joined conspiracy at a later stage.

8 In this regard, it may be mentioned here that the offence of conspiracy is difficult to be proved by a direct evidence. The offence punishable under section 120-B of the IPC, in most of the cases, is based on the circumstantial evidence. It is difficult to get direct evidence in case of a conspiracy. Conspiracy is always hatched in secrecy. Therefore, the investigating officer has to rely upon circumstantial evidence only. In the present case, also there are circumstances to prima facie indicate that the petitioner was either part of the conspiracy or she had joined the conspiracy at a later stage.

9 In my opinion, there is nothing wrong in the charge framed by the learned Special Judge against the Petitioner. The Petition is devoid of merits. It is dismissed accordingly.

(JUDGE)