

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

CRI. WRIT PETITION NO. 1898 OF 2012

Vidyapati Bhagwatpati Tiwari

... Petitioner.

V/s.

State of Maharashtra & Others.

... Respondents.

Mr. Omprakash Pandey, Advocate i/by M/s. Pandey & Co. for
Petitioner.

Mr. D.R. More, APP for the State.

Mr. Satish Upadhyay i/by M.V.Kini & Co. for Respondent No.2.

CORAM : M.L.TAHALIYANI,J.

DATE : 27th JULY, 2015

P.C. :

1 Admit. Heard finally. Heard learned counsel for the parties.

2 This writ petition impugns the order passed by the Additional Sessions Judge, Greater Bombay, rejecting the revision application no. 49 of 2011. The revision application was filed in the court by the petitioner/applicant against the order of the learned Metropolitan Magistrate, discharging the respondent nos. 2 to 8 under section 245 (2) of the Criminal Procedure Code. Initially, a process was issued against the respondent nos. 2 to 8 by the learned Magistrate, calling upon them to appear before him to answer the charges for the

offences punishable under sections 420, 465, 466 read with section 34 of the Indian Penal Code. Respondent Nos. 2 to 8 were discharged by the Magistrate in exercise of his powers under section 245 (2) of the Cr.P.C., as learned Magistrate came to the conclusion that the charges against the petitioner/applicant were groundless. This finding was based on the provisions of sections 32 and 33 of the Airport Authority of India Act 1994. The learned Magistrate took the view that the prosecution against the respondent nos. 2 to 8 could not have been launched as they were public servants within the meaning of Section 21 of the Indian Penal Code by virtue of the provisions of Section 32 of the Airport Authority of India Act and that they were protected by Section 33 of the said Act. The Revision Application filed by the Petitioner has been dismissed.

3 I have gone through the orders passed by the learned Magistrate. The learned Magistrate failed to realize that the charges against the respondent nos. 2 to 8 for the offence of forgery and cheating. Acts of the employees or the authorities are protected only if they are done in good faith and in pursuance of the Act or Rules or Regulations made thereunder. It is to be noted that the alleged forgery could not be said to have been made in a good faith nor it could be said to have been done in pursuance of the Act or the Rules.

4 In the circumstances, the order of the learned Magistrate cannot be sustained. The order passed by the learned Additional Sessions Judge also will have to be set aside. A complaint will have to proceed further in accordance with law.

5 The writ petition is allowed. The order passed by the learned Additional Sessions Judge in Criminal Revision Application No. 49 of 2011 and the order passed by the learned Magistrate in C.C. No. 90/SW/2008 on 9th November, 2010, discharging respondent nos. 2 to 8 under section 245 (2) of the Cr.P.C. are set aside.

6 Writ petition stands disposed of.

(JUDGE)

.....