

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

WRIT PETITION NO. 3298 OF 2014

Mr. Kundlik Chandrakant Karkar & Anr. .. Petitioners

Versus

Shri Kirpal Sundardas Bhagwani & Anr. .. Respondents

Mr. Deepak Ravindra More, for the Petitioner.

Mr. Vasant D. Raut, for the Respondent No. 1.

Smt. U.V. Kejriwal, APP for State.

CORAM : V.L. ACHLIYA, J.

DATE : 1st DECEMBER 2015

P.C. :

1 . The Petitioners have preferred this Petition against the order dated 26th July 2013 passed by J.M.F.C., Pimpri to frame charge under Section 406 against the Petitioners in private complaint filed by Respondent No. 1 registered as R.C.C. No. 435 of 2007.

2 . It is the contention of the Petitioners that the impugned order framing charge is not sustainable in law, as the Petitioners are the public servants within the meaning of Section 21 of the Indian

Penal Code. In absence of sanction from the Competent Authority, the order passed by learned Magistrate to frame charge against Petitioners in per se illegal and not sustainable in law. So also on due consideration of evidence before charge adduced by the Petitioner make out no case to frame charge under Section 406 of I.P.C.

3. Learned Counsel for Respondent No. 1 supported the order passed by the Trial Court and also objected the maintainability of Petition by pointing out that alternate and efficacious remedy by way of revision under Section 397 of the Cr.P.C. is available to Petitioner.

4. In view of the objection raised to maintainability of Petition, the learned Counsel for the Petitioners urged to withdraw the Petition with liberty to file Revision Petition before the appropriate Court.

5. Having regard to the facts and circumstances of the case and availability of alternate and efficacious remedy available to Petitioner by keeping all issues open for arguments before the Revisional Court, the following order is passed.

: ORDER :

- (i) The Petitioner is permitted to withdraw the Petition with liberty to file Revision Petition or any other appropriate proceeding before the appropriate Court. Petition is disposed of as withdrawn.
- (ii) In case the Petitioners opt to prefer the Revision Petition against the impugned order, then the Court concerned is directed to consider the request for condonation of delay by taking into consideration the Petitioner was prosecuting the remedy by way of the Writ Petition before this Court.
- (iii) All contentions raised by Petitioner are kept open.
- (iv) Writ Petition is disposed of in above terms.

[V.L. ACHLIYA, J.]