

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal WRIT PETITION No. 608 OF 2014

PETITIONER :- Jaichand s/o Murlidhar Jambhulkar
aged 53 years, Occ.: Service
r/o Plot no. 3, Kapilnagar,
Near Nari Telephone Exchange Chowk,
Nagpur.

...VERSUS...

RESPONDENT :- The State of Maharashtra,
through P.S.O. Mouda,
District Nagpur.

Mr. M.P. Kariya Advocate for Petitioner.
Mr. A.K. Bangadkar, A.P.P., for Respondent.

CORAM : S.B. Shukre, J.
DATED : 12.01.2015

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. It is seen that although there is prima facie evidence showing the petitioner was present at the time when weight of steel which has been allegedly misappropriated in this case was weighed, the weight of steel was taken not only in presence of this petitioner but also in presence of accused no. 1 Lekhraj who was representing M/s Era Infra Engineering Ltd. But, except for this, there is absolutely no evidence showing that offence

punishable under Section 406 read with Section 34 of Indian Penal Code is prima facie made out against the petitioner. There is a statement of co-accused Lekhraj disclosing that Lekhraj had given part of the sale proceeds of misappropriated steel to this petitioner. This statement has been made to a Police Officer by a co-accused and, therefore, is not admissible in evidence. This statement, therefore, would have to be discarded at this stage itself and then nothing remains in this case so far as the present petitioner is concerned.

3. The learned APP also could not show to me presence of any prima facie evidence against the present petitioner barring statement of co-accused. In the circumstances, this is a fit case for discharging the petitioner.

4. In the result, writ petition is allowed. The impugned orders dated 23.5.2013 passed by J.M.F.C. Mouda in Regular Criminal Case No. 104/2011 and dated 13.3.2014 passed in Criminal Revision No. 182/13 by learned Additional Sessions Judge-2 Nagpur are hereby quashed and set aside. Application (Ex.12) of the petitioner is allowed and the petitioner stands discharged.

Rule is made absolute. Writ petition stands disposed of.

JUDGE

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