

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

CRIMINAL WRIT PETITION NO.587 OF 2016

Amol s/o Kakasaheb Lekurwale ... PETITIONER

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Shri M.V. Salunke, Advocate for the petitioner
Shri K.D. Mundhe, A.P.P. for respondent/ State
.....

CORAM: N.W. SAMBRE, J.

DATED: 26th October, 2016.

ORDER :

1. Heard Shri Salunke, learned counsel for the petitioner and the learned A.P.P. for the respondent. The petitioner has questioned the order dated 1.4.2016, passed below Exh.12 in R.C.C. No.320/2013, whereby the claim of the petitioner for discharge under Section 239 of the Criminal Procedure Code came to be rejected. The facts as are necessary for deciding the present writ petition are as under :

2. On March 16, 2012, Crime No.76/2012 came to be

registered against the accused for an offence punishable under Sections 199, 200, 420 read with Section 34 of the Indian Penal Code and Sections 64(1), 65(2), 65(3), 65(4) of the Drugs and Cosmetics Act with an allegation that the petitioner, for a period from September 4, 2003 to June 22, 2008, was working on full time basis with various Pharmaceutical Companies. In spite of the said full time employment, he has given an affidavit that he was working with M/s Lifeline Medicals & General Stores and Shree Medical & General Stores for a period from 26.7.2002 to 10.5.2010 with small intervals. According to prosecution, the employment of the petitioner at both the places was not possible, however, he has furnished an affidavit stating that he was working with Medical Stores with an intention to practice fraud resulting into registration of the offence in question.

3. After the charge sheet came to be filed against the petitioner, an application under Section 239 for discharge came to be rejected on the ground that there is prima facie material against the petitioner which order is questioned by him including that of prayer for quashing of the proceedings.

4. Shri Salunke, the learned counsel for the petitioner would urge that, the Drugs and Cosmetics Act, 1940 is a special statute, which provides for the remedies and penalties when a

Pharmacist holding a licence thereunder violates the licence conditions. He would then urge that, it being so, the present petitioner cannot be prosecuted for the offence in question and as such, the criminal prosecution is not maintainable. He would then urge that, there is no Section in the Statue Book so as to claim that the petitioner has committed any offence which is punishable under the Act. It is claimed that, neither any enquiry nor any show-cause-notice was served on the petitioner. He would also claim that the petitioner is falsely prosecuted in the crime in question since at his behest a criminal complaint was filed on 14.10.2011 in the matter of selection of the candidates for the post of Drug Inspector as the appointments were made with a malice and malafide intention so as to accommodate kith and kin of the politicians and bureaucrats by granting selection/appointments to undeserving candidates.

5. Per contra, the learned A.P.P., while relying upon the affidavit of the official from the Department, would urge that, there is a strong prima facie case against the present petitioner. According to him, during enquiry and investigation, sufficient documentary evidence is collected demonstrating that the petitioner has claimed to have worked at two places at the same time being a full time employee, which in any case is not permissible under the provisions of the Drugs and Cosmetics Act,

1940 and Rules of 1945 framed thereunder. According to him, this Court cannot at this stage appreciate the evidence so as to order discharge and submits that, the present proceedings are liable to be rejected.

6. After considering the rival submissions of the parties, it is required to be noted that the petitioner was working with the various Pharmaceutical or other Companies on full time employment basis. The investigation agency has collected the documents to that effect, which demonstrates about his full time employment. It is then required to be noted that, the petitioner has given an affidavit in support of a Pharmacist, who holds a licence that he was working with the said Pharmacist for full time, which appears to be a condition necessary for holding and operating licence for sale of scheduled drugs. It is then required to be noted that, the said act on the part of the petitioner is in contravention of the Rule 64(1) of the Drugs and Cosmetics Rules, 1945.

7. Apart from above, the material as is placed on record by the investigation agency depicts that the petitioner is prima facie involved in the crime in question and his claim that he is made scapegoat because he has initiated complaint against the officials of the State Government in the matter of recruitment of

the Food and Drug Inspector, is without any basis and there is sufficient material on record to prima facie infer that the petitioner is involved in the crime in question. It is then to be noted that, the respondent authority having noted that the petitioner was not working with the Medical Shop, who holds a Pharmacist's licence, which was issued on the basis of the affidavit given by the present petitioner that he being a qualified person, will be available for operating the said licence for the full time, appears to have been violated. Prima facie what could be inferred is, the petitioner has given a false affidavit which constitutes an offence under Sections 199 and 200 of the Indian Penal Code. Apart from above, as per Rule 65(2) of the Drugs and Cosmetics Rules, it is incumbent for a registered Pharmacist to sell and distribute the the scheduled drugs under the supervision of a qualified Pharmacist like the petitioner. It is then to be noted that, under Rule 18(A) to 18(C) of the said Act, the person cannot contravene provision of the Rules and same is punishable under Section 27(B) of the said Act. Rules 64 and 65(A) of the Rules of 1945 confer power on the respondent to call for the additional information for verifying the correctness of the statement made by the applicant or licensee while issuing or after issuance of licence.

8. From the record, it depicts that the petitioner having

taken full time employment at some other place and shown to have been working with Pharmaceutical Companies, there is a strong evidence available against the petitioner. As such, no case for interference particularly for discharge or quashing is made out. The petition, as such, fails. Dismissed.

(N.W. SAMBRE, J.)

fmp/cwp587.16