

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

CRIMINAL WRIT PETITION NO. 1377 OF 2015

Shivaji s/o Bapurao Gaikwad

...Petitioner

VERSUS

The State of Maharashtra & anr.

...Respondents

.....

Shri M.D.Narwadkar, advocate h/f

Shri R.V.Deshmukh, advocate for petitioner

Smt. A.V.Gondhalekar, A.P.P. for respondent no.1/State

Shri A.B.Hawale, advocate for respondent no.2

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CORAM : A.V.NIRGUDE

AND

INDIRA K.JAIN, JJ.

DATED : 22nd January, 2016

ORDER :

1] Accused no.1 Shivaji moved this petition for getting Crime No.125 of 2015 registered at Shivajinagar police station, Beed quashed to his extent.

2] The facts leading to filing of the first information report are as under : -

[We requested the learned A.P.P. to produce before us all investigation papers and they were accordingly produced before us. We perused the same and draw following information.]

3] Respondent no.2 complainant wanted certified copies of certain registered documents from the Sub-Registrar's office at Beed. He, therefore, went to the office of the Sub-Registrar. For obtaining

copies he went to the Record Room where he met one Jadhav who told him that he would provide certified copies of the documents provided respondent no.2 complainant gave Rs.1800/-. Complainant assumed that Jadhav was a public servant and was demanding bribe from him. He, therefore, lodged the complaint on such demand to the Anti Corruption Bureau.

4] The Bureau thereafter arranged a trap and in presence of shadow panch Jadhav accepted Rs.1800/- from respondent no.2 complainant. Immediately Bureau officer disclosed to Jadhav that he had received bribe and they would arrest him. The entire case turned turtle thereafter. Jadhav disclosed that he was not a public servant. He was not working as record keeper or copying clerk in the Sub-Registrar's office but he was doing this kind of work for quite some time. The investigating officer thereupon called for the record keeper. It is then the present petitioner Shivaji went before the investigating officer and disclosed to him that he was the record keeper. He also disclosed to the investigating officer that original documents if required would be sent to copying clerk. He said that such work was done by him. The Sub-Registrar, whose name is not clearly mentioned in the complaint but elsewhere we found the name of the Sub-Registrar as S.M.Jadhav, disclosed to the investigating officer that Jadhav was not employee of the office. The question is whether the investigating officer could have proceeded against petitioner Shivaji.

5] On perusal of all the papers we did not come across anything which would indicate that Jadhav who received Rs.1800/- had anything to do with petitioner Shivaji. There is no statement of any independent witness or even accused Jadhav indicating that he

received or he used to receive amounts for and on behalf of petitioner Shivaji. Despite lack of this connection between petitioner Shivaji and the officer who received Rs.1800/- from the complainant, the investigating officer filed this complaint against petitioner Shivaji as well as the person who received Rs.1800/- from Jadhav. Unfortunately this futile attempt to prosecute the petitioner was even ignored by the officer who accorded sanction for prosecution. This officer is the Collector/District Registrar who mentioned in his order that it was the petitioner Shivaji 'who permitted Jadhav to work' in his office as copying clerk. As indicated above, there is no material to indicate that it was Shivaji who permitted Jadhav. If Jadhav was found working in the Sub-Registrar's office it could be even the Sub-Registrar who could have permitted Jadhav to work as copying clerk. Despite the fact that there is no material on record to indicate that it was petitioner Shivaji who permitted Jadhav to work as copying clerk, a unilateral conclusion was drawn by the investigating officer and also by the sanctioning authority that it was petitioner Shivaji who must have permitted Jadhav to work as clerk. This is nothing but a guess work. The case would fail against the petitioner.

6] The petition is allowed in terms of prayer clause 'B'.

[INDIRA K.JAIN, J.]

[A.V.NIRGUDE, J.]

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