

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.638 OF 2016

Yesumithra Sabanna

...Petitioner

vs

Chief Manager,
Nitin Arun Nivsarkar,
Central Railways Employees
Co-Operative Credit Society Ltd.

...Respondent

WITH

WRIT PETITION NO.460 OF 2016

The Central Railways Employees Co-operative
Credit Society Ltd.

...Petitioner

vs

1. Yesumithra Sabanna &
2. The Ld. Member,
Industrial Court, Mumbai

...Respondents

.....

Yesumithra Sabanna, Petitioner in person in Writ Petition No.638 of 2016 and Respondent in person in Writ Petition No.460 of 2016.

Mr. Kiran S. Bapat, a/w. Jayesh Desai, i/b. Desai and Desai Associates,
for the Respondent in Writ Petition No.638 of 2016 and for the
Petitioner in Writ Petition No.460 of 2016.

.....

CORAM : S.C. GUPTE, J.

DATED: APRIL 22, 2016

P.C. :

. Writ Petition No.460 of 2016 is filed by Central Railway
Employees Co-operative Credit Society Ltd., who is the employer of the

Respondent. The petition challenges an order of the Industrial Court, Mumbai passed in a revision application. The revision application was filed by the first Respondent, whose complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was dismissed by the Labour Court. The Revisional Court partly allowed the revision application and set aside the order of the Labour Court, directing the Petitioner employer to reinstate the first Respondent employee in his original post with continuity of service and with 50% back wages. Writ Petition No.638 of 2016 is filed by the first Respondent employee challenging the revisional order referred to above to the extent that it does not allow full back wages to the employee and also to the extent that it does not issue a sanction to prosecute the employer for filing of a false affidavit under Section 193 of IPC read with Section 33(4) of the MRTU and PULP Act. The two petitions are being tagged together and disposed of by this common order.

2. The disputes between the parties have a long and checkered history, which, in any event, bears a mention in detail so as to understand and resolve the controversy. The facts are, accordingly, noted below:

(i) On 30 July 1987, the Central Railway Employees Co-operative Credit Society Ltd. ("Petitioner") appointed Yesumithra Sabanna ("Respondent") as a Junior Clerk, posting him at Bhusawal. For the relevant period, the service conditions of the Respondent were governed by an agreement of 1989, which was a settlement between the Petitioner and CRECC Workers Union, to whom the Respondent

belonged.

(ii) On 25 July 1994, the Petitioner transferred the Respondent from Bhusawal to its Jhansi Branch. On 30 July 1994, the Respondent was relieved from the Bhusawal Branch, so as to enable him to report at the Jhansi Branch. The Respondent, however, did not report at the Jhansi Branch, but instead challenged the transfer order by filing Complaint (ULP) No.796 of 1994 before the Industrial Court at Mumbai. The Industrial Court at Mumbai, by way of interim relief, stayed the transfer order.

(iii) On 30 August 1994, after hearing the parties, the Respondent's application for interim relief was finally rejected by the Industrial Court.

(iv) The Respondent challenged the rejection order of the Industrial Court by filing Writ Petition No.2044 of 1994. During the pendency of this petition, the interim relief, originally granted by the Industrial Court, was continued. Finally, by an order dated 17 October 1994, the Respondent's writ petition was rejected by this Court. The Respondent's Letters Patent Appeal from the rejection order was also dismissed by a Division Bench of this Court.

(v) On 28 October 1994, having regard to the Respondent's failure to report at Jhansi, the Petitioner issued a show cause notice to the Respondent. Since the Respondent refused to accept the show cause notice, the notice was sent along with a covering letter to his addresses,

both at Bhusawal and Mumbai. The Respondent did not send any reply to the show cause notice, but instead kept addressing correspondence requesting for leave/extension of leave to the Bhusawal Branch Manager of the Petitioner. On 15 November 1994, the Respondent was informed by the Bhusawal Branch that since he was relieved from Bhusawal, the Branch had no administrative control over him. The Respondent was directed to approach the competent authority for leave, if any.

(vi) On 4 March 1995, after waiting for over four months, the Petitioner sent another notice to the Respondent. The notice was duly received by him.

(vii) In the meantime, in 1992, the Respondent had filed a complaint, being Complaint (ULP) No.60 of 1992, before the Industrial Court at Nashik, against the Petitioner, presumably relying on a 1976 agreement signed between the Petitioner and the Union, seeking a transfer at Mumbai. That complaint was dismissed by the Industrial Court on 9 July 1993. The Respondent challenged that order before this Court by filing a writ petition, being Writ Petition No.4176 of 1993.

(viii) By its order dated 28 April 1995, this Court disposed of a civil application by the Respondent in its writ petition directing the Petitioner to consider the request of the Respondent for being transferred to Mumbai, having regard to the seniority of persons and grant the same, if the same was feasible. This Court, at the same time, clarified that the Court was not persuaded to set aside any of the transfer orders already passed and that, as far as possible, the

Respondent may be accommodated in Mumbai, in a vacancy, which may arise in future.

(ix) On 4 July 1995, considering the request of the Respondent, the Petitioner transferred the Respondent to Mumbai. Even after the Respondent resumed duties at Mumbai, the Respondent never made any application for regularising his leave from the date he was relieved from the Bhusawal Branch to report at the Jhansi Branch.

(x) In the premises, on 15 January 1996, the Petitioner issued a charge-sheet to the Respondent for mis-conduct of insubordination and wilful disobedience of the lawful and reasonable orders of the superiors and for remaining absent without leave from 17 October 1994 to 4 July 1995, i.e. till the date of his transfer to Mumbai.

(xi) The charges were enquired into with the participation of the Respondent in the enquiry. The Enquiry Officer found the Respondent to be guilty of the charges levelled against him.

(xii) In the premises, on 7 June 1996, a show cause notice was issued to the Respondent calling upon him to show cause why disciplinary action should not be taken against him. The Respondent did not reply to this show cause notice. In the premises, on 10 June 1996, after considering the report of the Enquiry Officer and the past record of the Respondent, the Petitioner issued a letter awarding him punishment of dismissal.

(xiii) The Respondent carried an appeal from the disciplinary authority to the appellate authority, namely, Chairman of the Petitioner Society. The appellate authority was pleased to set aside the dismissal order and remit the matter back to the disciplinary authority to proceed de- novo from the stage of issuance of show cause notice.

(xiv) In the premises, on 24 July 1996, a fresh show cause notice calling for the Respondent's explanation was issued to him. The Respondent submitted his explanation. Once again, the enquiry proceedings, together with the explanation submitted by the Respondent to the show cause notice and the past record of the Respondent, was placed before the Vice Chairman of the Petitioner Society, who, after going through the same, decided to award the penalty of removal from service. By a letter dated 23 August 1996, the decision of the disciplinary authority was acted upon by the Petitioner by issuing a dismissal order. Once again, the Respondent carried the matter before the appellate authority, who rejected the Respondent's appeal. The rejection was conveyed by the Petitioner to the Respondent by its letter dated 13 November 1996.

(xv) The Respondent, thereupon, challenged the dismissal order by approaching the Labour Court in a Complaint of unfair labour practice under Section 28 read with Item 1(a), (b), (c), (d), (e), (f) and (g) of Schedule IV of the MRTU & PULP Act, 1971, being Complaint (ULP) No.594 of 1996.

(xvi) Vide its order dated 13 March 1997, the Labour Court

granted interim relief to the Respondent by way of reinstatement. That order was challenged by the Petitioner Society in a revision before the Industrial Court. By its order dated 30 April 1997, the Industrial Court stayed the reinstatement order for a limited period directing the Labour Court to dispose of the complaint expeditiously within one month and directing the Petitioner Society, in the meantime, to deposit the Respondent's wages from the date of the dismissal order. This order was modified by the Labour Court by its subsequent order dated 31 May 1997, directing the Petitioner Society to deposit the wages of the Respondent, pending the hearing of the Respondent's complaint, and allowing the latter to withdraw such wages by furnishing a surety.

(xvii) In the meantime, by its application, the Petitioner Society in the Respondent's pending complaint, gave up the issues of fairness of enquiry and validity of the report and findings of the Enquiry Officer, and took upon itself to prove the charges levelled against the Respondent before the Labour Court. Also, in the meantime, the Respondent made various applications alleging perjury as well as contempt of court on the part of the Petitioner and applying for transfer of the original complaint.

(xviii) Many applications and orders later, finally, by its final judgment and order dated 3 August 2001, after allowing the parties to lead evidence and after hearing both sides, the Labour Court rejected the Respondent's complaint and directed the Respondent to refund the amount of wages received by him, in the interregnum, under the interim orders passed in the complaint. As of the date of the order, such wages

amounted to Rs.3,28,816.63.

(xix) The Respondent challenged the dismissal of the complaint, first by filing a review application before the Labour Court. On 29 January 2001, the review application was rejected by the Labour Court. That order was challenged by the Respondent before this Court by filing a writ petition, namely, Writ Petition No.2071 of 2011. The writ petition was disposed of by this Court by directing the Respondent to approach the Industrial Court to challenge the final judgment and order dismissing his complaint by the Labour Court.

(xx) The Respondent, thereafter, approached the Industrial Court by filing a revision application. On that application, the Industrial Court remanded the original complaint for a fresh hearing by the Labour Court. Even that order was challenged by the Respondent before this Court by filing a writ petition. The writ petition was rejected by this Court. Thereupon, a Letters Patent Appeal was carried before a Division Bench of this Court, who also rejected the appeal. The Division Bench order was carried in a special leave petition before the Supreme Court. The SLP was rejected by the Supreme Court.

(xxi) In the meantime, on remand of the original complaint, the applications alleging perjury and contempt of court were rejected by the Labour Court.

(xxii) Both parties led further evidence in the remanded complaint before the Labour Court.

(xxiii) By its order dated 31 December 2004, the Labour Court, once again, dismissed the original complaint.

(xxiv) The Respondent challenged the dismissal order in a revision application before the Industrial Court. By its order dated 19 August 2006, the Industrial Court remanded the matter for the third time on limited issues before the Labour Court.

(xxv) Upon remand, the Respondent chose not to appear before the Labour Court. In the premises, by its order dated 21 January 2007, the Labour Court was pleased to dismiss the original complaint for the third time.

(xxvi) In the meantime, the Respondent had challenged the remand order of the Industrial Court before this Court by filing a writ petition, being Writ Petition No.579 of 2007. The writ petition was eventually withdrawn by him.

(xxvii) The Respondent, thereafter, approached the Labour Court seeking condonation of delay and restoration of his original complaint. That application was dismissed by the Labour Court. The dismissal order was, once again, challenged by the Respondent by filing a revision application. The revision application was partly allowed by the Industrial Court directing the Labour Court to decide the delay condonation application afresh on merits. Finally, the Labour Court allowed the application and restored the original complaint of the

Respondent.

(xxviii) It was now the Petitioner's turn to challenge this order by a revision application before the Industrial Court. That revision was dismissed by the Industrial Court.

(xxix) By its order dated 22 October 2008, the Labour Court was pleased to reject the miscellaneous restoration application of the Respondent.

(xxx) The Respondent now carried the matter in revision before the Industrial Court. The revision came to be allowed.

(xxxi) The Petitioner challenged the order of the Revisional Court before this Court by filing a writ petition. The writ petition was dismissed.

(xxxii) On 27 June 2010, after the dismissal of the writ petition, both parties appeared before the Labour Court. By its order dated 26 February 2010, the Labour Court was pleased to dismiss the original complaint for the fourth time.

(xxxiii) Once again, the Respondent challenged the order of the Labour Court before the Industrial Court.

(xxxiv) By its impugned order dated 5 October 2015, after hearing both the sides, the Industrial Court set aside the order of the

Labour Court dismissing the complaint, allowed the complaint partly and directed the Petitioner to reinstate the Respondent with full facilities and continuity of service with effect from 28 August 1996 along with 50% back wages based on the salary payable in the month of July 1996.

(xxxv) That order is the subject matter of the challenge herein at the instance of both parties by way of two separate petitions, the Petitioner challenging the order of reinstatement with 50% back wages, and the Respondent challenging the order to the extent of the refusal to grant him full back wages and also to direct prosecution of the Petitioner for perjury.

3. The reading of the orders of the Courts below indicates that the first Court, i.e. the Labour Court, had, after a detailed consideration of the evidence on record, held that the Petitioner had substantiated the charges levelled against the Respondent. The Respondent was transferred from Bhusawal to Jhansi by an order of 25 July 1994 and relieved from the Bhusawal Branch by a letter dated 29 July 1994, so as to enable him to report at Jhansi on 24 July 1994. It is an admitted fact that the Respondent never reported at Jhansi but instead filed a complaint and prosecuted the same before different courts. It is also an admitted fact that the Respondent was absent from work and failed to report at the transferred location, namely, at Jhansi and was absent from work between 17 October 1994 and 4 July 1995. It is also an admitted position that after 17 October 1994, the Respondent did not have any interim order in his favour. The Labour Court, in the

premises, came to the conclusion that the absenteeism of the Respondent stood proved by reason of the unauthorised absence between 17 October 1994 and 4 July 1995. The Labour Court also considered the Respondent's applications for extension of leave made to the Branch Manager of the Petitioner at Bhusawal. The Labour Court noted the admitted position that no leave was granted or extended upon such applications. The Court noted the letter of the Bhusawal Branch addressed to the Respondent, communicating to him that it had no administrative control over him, considering that he was relieved from the Bhusawal Branch after his transfer to Jhansi. The Labour Court noted that from the applicable standing orders it appears that any employee of the Petitioner Society, who desired to obtain leave of absence, had to apply to the Manager in writing before a stipulated period; and that no leave or extension could be deemed to have been granted unless an order to that effect was passed and communicated to the employee concerned. The Labour Court held that taking into consideration the standing orders, mere giving or sending of an application for extension of leave was not sufficient but the leave had to be granted or extended by a specific order and that no such order was issued and therefore, it was imperative for the Respondent to have resumed duties at the transferred location. The Labour Court also considered whether the punishment awarded to the Respondent was disproportionate to the gravity of his misconduct. The Labour Court came to the conclusion, on the basis of the material on record, including the past service record of the Respondent (which was also considered by the Disciplinary Authority), that the decision to terminate the Respondent's services was justified. The Labour Court also considered

the Respondent's plea that similarly placed employees as the Respondent, who had committed the same misconduct, were awarded minor punishments, but were not terminated from service. The Labour Court considered the distinction between the cases of these other employees and the case of the Respondent. The Court rightly considered that the other employees had submitted applications for regularisation of their leave as without pay or extraordinary leave and, in the premises, such leave was granted and a minor punishment was inflicted upon them. The Labour Court, in the premises, dismissed the complaint.

4. In my view, this order was clearly in accordance with law. It duly considered the evidence on record. It considered all the pleas advanced by the parties. It did not refer to any irrelevant material or disregard any relevant material and came to a conclusion, which is pre-eminently a possible conclusion.

5. In its impugned order, whilst setting aside the order of the Labour Court and reinstating the Respondent with 50% back wages, the Industrial Court appears to have analyzed the evidence afresh, and quite wrongly at that, as I have noted below. The Industrial Court, at the outset, accepted the ratio of various rulings cited before it that its powers, sitting as a revisional court, did not include the power to reassess the material on record as a full fledged appeal but that it could interfere with the order of the Labour Court only if the same was perverse. (That has been the consistent view of all courts including our court in the judgments cited by the Respondent, namely, **Hotel Oberoi**

Towers vs. Gopal Naidu¹, Spices and Oil Seeds Exchange vs. Suhas Anant Kulkarni² and Maruti Dattatraya Patankar vs. M.D., Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girni Ltd.³) Yet, at the same time, as the impugned order of the Industrial Court discloses, it clearly re-appreciated the entire evidence on record. What is more striking, however, is that while re-appreciating the evidence, the Industrial Court did not, in terms, deal with the aspect of unauthorised absence of the Respondent between 17 October 1994 and 4 July 1995. It did not, in terms, consider the main question as to whether or not the Respondent was justified in reporting for the duty at the transferred location, namely, Jhansi, between 17 October 1994 and 4 July 1995, during which period the Respondent's complaint of unfair labour practice on account of his transfer had stood rejected and that there was no interim order by any Court allowing the Respondent not to join duties at the transferred location. The only ground, which seems to have weighed with the Industrial Court, is that the Respondent was finally transferred by the Petitioner to Mumbai in pursuance of the direction of this Court in the Respondent's writ petition (Writ Petition No. 638 of 2016). In the first place, it is important to note that this Court, whilst directing the Petitioner to consider the Respondent's application for transfer to Mumbai (and not really directing the Petitioner to transfer him), had expressly observed that by issuing such directions, it was not interfering in any way with the transfer orders themselves. It is a forgone conclusion, in the premises, that the original order of transfer of the Respondent from Bhusawal to Jhansi had always stood the ground. It

1 2002(4) BOMCR58

2 1989 High Court, Bombay, 395

3 W.P.No.5002/1989 dated April 17, 1995, Cora: B.N. Srikrishna, J.

was only that this Court wanted the Petitioner Society to consider, having regard to various circumstances, including vacancies that may arise in future, whether the Respondent could be transferred to Mumbai. Any transfer to Mumbai, in the premises, operates with effect from the date of such transfer. That happened on 4 July 1995. This transfer, *per se*, is no justification for the Respondent not having joined duties at the transferred location earlier, namely, at Jhansi. Admittedly, after 17 October 1994, when the dismissal of the Respondent's complaint was affirmed by this Court and the interim relief in favour of the Respondent was vacated, the Respondent had no business to refrain from joining duties at Jhansi. His subsequent transfer by the Petitioner to Mumbai does not absolve him of his absence between 17 October 1994 and 4 July 1995, i.e. the date of his subsequent transfer to Mumbai.

6. The Industrial Court appears to have wrongly referred to Clauses 3 and 5 of Schedule IV of the MRTU and PULP Act, 1971. In the first place, it was not his transfer to Jhansi, which was challenged by the Respondent in his original complaint. Secondly, and at any rate, the Labour Court had no jurisdiction to entertain any complaint on account of the Respondent's transfer. The Labour Court was simply considering whether the Respondent's dismissal was an unfair labour practice within the meaning of Clause 1 of Schedule IV.

7. So also, the case of the other four employees considered by the Industrial Court in the light of the plea of disproportionate punishment, does not appear to be in order. In the first place, there was no need for the Industrial Court to reassess the evidence in this behalf.

Secondly, and more importantly, the distinguishing feature of the others' case from the case of the Respondent, namely, their applications for regularisation of leave as unpaid leave or extra ordinary leave which were accepted, and which matter was rightly considered by the Labour Court, does not appear to have been considered by the Industrial Court. The Industrial Court not only reassessed the evidence unauthorizedly, but even whilst assessing it, has come to improper and impermissible conclusions.

8. The cases of **The Director, N.R.S.A. Balanagar, Hyderabad vs. G. Reddeppa**⁴, **L. Ragupathy vs. Addl. Commr. For Workmen's Compensation**⁵ and **Birendra Kumar Das vs. State of Bihar**⁶ cited by the Respondent are clearly distinguishable. In **Reddeppa's** case, for refusing to accept the transfer order, the concerned employee was awarded the punishment of dismissal. Quite so, but there the similarity between that case and our case ends. In **Reddeppa's** case, the terms of employment were governed by Central Civil Service Rules ('CCA Rules'). These Rules classified minor and major penalties and also provided for type of cases which would merit the respective actions for imposing minor and major penalties. The cases in which major penalties, which included dismissal of the delinquent employee, could be awarded were not just cases of misconduct, but of substantial misdemeanour which presented an element of criminality. What the Court found was that the failure to report for duty, which was the foundation for the action against the employee in that case, was no doubt an actionable lapse, but

4 1991 LAB I.C. 1378

5 H.C.MAD. 789

6 1994 (Pat. H.C.) 870

to describe the same as substantial misdemeanour within the CCA Rules was both arbitrary and unreasonable, and accordingly, the dismissal was held to be illegal. These facts have no bearing on our case. **Reddeppa's** case is not an authority for a general proposition that refusal to accept a transfer order or failure to report on duty upon transfer cannot attract the penalty of dismissal. In **Ragupathy's** case, the Court found that there was no proper transfer order passed by the competent authority. The Court also did not find merit in the employer's plea that the employee had acquiesced in the order of transfer. The Court, in the premises, interfered with the dismissal based on non-compliance with the transfer order. In **Birendra Kumar Das**, the employee had remained absent from duty on a certain misconceived notion of law and wrong legal advice and the Court held that this did not warrant a major punishment of discharge as awarded to the employee. The Court found that the punishment was not commensurate with the gravity of the charge. Even these facts are clearly distinguishable from the facts of our case. In our case, despite this Court vacating the interim relief, and the Respondent's applications for leave not being granted by the Petitioner, he chose to remain absent and did not join duties at the transferred location for more than eight months. That is a serious misconduct and it would warrant the punishment of dismissal.

9. At the hearing of the writ petition, it was submitted by the Respondent that the disciplinary authority, which passed the order of dismissal, had no jurisdiction or authority to do so. I am afraid, this was not a point raised in the original complaint of the Respondent whilst

challenging his dismissal. Neither of the Courts below has accepted the Respondent's contention in this behalf. This aspect of the orders of the Courts below is not the subject matter of challenge before this Court either. In any event, it is seen from the documents produced before this Court at the hearing of the writ petitions by the Respondent himself that the original order of dismissal was passed by the Vice Chairman of the Petitioner Society, though conveyed by the Chief Manager. That order was carried by the Respondent before the appellate authority, namely, the Chairman. It also appears from the documents produced before this Court, namely, the minutes of the board meetings, that even the board of directors of the Petitioner Society, in its meeting dated 21 March 1997, had unanimously ratified the action taken by the Chief Manager of the Petitioner vide his circular dated 2 December 1996 dismissing the Respondent from the services of the Society. There is, thus, no merit in this contention. The judgment of the Supreme Court in the case of **Marathwada University vs. Seshrao Balwant Rao Chavan**⁷ is of no assistance to the Respondent. Apart from the question of delegation, there is also a case of ratification here, such ratification being clearly borne out by the record.

10. In the premises, the impugned order of the revisional court suffers from a grave infirmity and cannot be sustained.

11. Accordingly, Rule issued in Writ Petition No.460 of 2016 is made absolute and the impugned order of the Industrial Court is quashed and set aside. The order of the Labour Court at Mumbai, dated

⁷ Civil Appeal No.3927 of 1986 dated 13 April, 1989, Cora: K. Jagannath Shetty & Kuldip Singh, JJ.

26 February 2010, is restored. The Respondent is directed to refund the amount of Rs.3,28,816.63 to the Petitioner Society within a period of eight weeks from today.

12. As far as the Respondent's writ petition, namely, Writ Petition No.638 of 2016 is concerned, the challenge of the Respondent to the revisional court's refusal to allow 50% of back wages to him, stands repelled for the same reasons, which are indicated above. Since the order of reinstatement with any back wages is not sustainable, there is no question for the Respondent being entitled to the balance 50% of back wages. The cases on back wages cited by the Respondent, namely, **S.M. Saiyad vs. Baroda Municipal Corporation Baroda**⁸ and **Metropolitan Transport Corporation vs. V. Venkatesan**⁹, are of no assistance to the Respondent.

13. Insofar as the Respondent's challenge to the refusal of the Revisional Court for sanction of prosecution under Section 195 of the Code of Criminal Procedure is concerned, it is apparent from the record that what the Respondent alleges as false testimony, is nothing but the pleas taken by the Petitioner in the original complaint. Merely because these pleas are raised in an affidavit, they do not cease to be pleas. (In any event, all pleadings in a complaint are in a form of affidavits.) In its affidavit-in-reply, the Petitioner has denied the Respondent's case that the Respondent had asked the Enquiry Officer to supply documents relating to the charges framed. It had also taken up a plea that the Respondent had not asked for any list of witnesses. The Petitioner had

⁸ AIR 1984 SC 1829

⁹ AIR 2010 SC 206

also submitted in its reply that the Respondent was not an active unionist, as contended by him. The Petitioner had also taken up a plea that it had not received any formal communication from the Respondent during the period of his unauthorised absence. These are matters of pleadings. Even if these pleadings were found by the court to be wrong, such finding does not invite either an action in perjury or any contempt of Court. In any event, the Court has not found these pleas to be incorrect. There is, accordingly, no question of the Industrial Court issuing any sanction for prosecuting the Petitioner for perjury or for contempt of court. The Respondent relied on a judgment of the Supreme Court in the case of **K. Karunakaran vs. T.V. Eachara Warriar**¹⁰ and a judgment of our Court in **Pritish Ramrao Tayde vs. State of Maharashtra**¹¹, in support of his contention that all that has to be considered at the stage of an inquiry for a prosecution under Sections 193 or 195 is, whether a prima facie case is made out and it is in the interest of justice to take such action. There is no quarrel with this proposition. But the question here is, whether such prima facie case is made out. The Court below did not think so, and this Court finds no reason to interfere with that finding. Besides, as held by the Supreme Court in the case of **Dr. S.P. Kohli vs. High Court of Punjab and Haryana through Registrar**¹², cited by the Respondent himself, there must not only be a prima facie finding that there is falsehood, but that such falsehood is deliberate and conscious for the Court to sanction such prosecution. There is no such case here.

10 Criminal Appeal No.272 of 1977, decided on 16.11.1977, Coram: P.K. Goswami and V.D. Tulzapurkar, JJ.

11 2001(1) Mh.L.J., 937

12 Criminal Appeal Nos. 3 of 1977, decided on 12.09.1978, Cora: A.D. Koshal, Jaswant Singh and P.S. Kailasam, JJ.

14. There is, thus, no merit in the Respondent's petition. Accordingly, Rule in Writ Petition No.638 of 2016 is discharged and the petition is dismissed.

15. In the facts of the case, there shall be no order as to costs.

(S.C. GUPTE, J.)