

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

CRIMINAL WRIT PETITION NO. 605 OF 2006

Kasinath Mallikarjun Ale
Age: 54 yaers, Occu.: Service as
Junior Clerk in the Office of the
Inspection Sub-Division, Osmanabad,
R/o New Sinchan Colony, By pass road,
Osmanabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through the Police Station Officer,
Police Station Paranda, Dist. Osmanabad.
2. The Deputy Superintendent of Police,
ACB, Osmanabad.

..RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO. 605 OF 2006**

Shahu Rambhau Zirmire
Age: 53 yaers, Occu.: Service as
Sectional Engineer in the Office of the
Inspection Sub-Division, Osmanabad,
R/o Bhanu Nagar, Osmanabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through the Police Station Officer,
Police Station Paranda, Dist. Osmanabad.
2. The Deputy Superintendent of Police,
ACB, Osmanabad.

..RESPONDENTS

....
Mr. S.S. Choudhari, Advocate for petitioners.
Mr. S.J. Salgare, A.P.P. for respondents.
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CORAM : T.V. NALAWADE, J.
DATED : 02nd FEBRUARY, 2017

ORAL JUDGMENT :

1. Both petitions are filed to challenge the show cause notices dated 16th August, 2006 and 03rd August, 2006 issued in Special Case No. 10 of 2004 which was pending in the Court of Special Judge, Osmanabad. The case was filed for the offences punishable under the Prevention of Corruption Act, 1988. The notices were issued under Section 344 of the Code of Criminal Procedure before deciding the matter. Both sides are heard.

2. The provision of Section 344 shows that if at the time of delivery of the judgment or passing of final order the criminal Court forms opinion to the effect that any witness who has given evidence in the Court has knowingly or willfully given false evidence or has fabricated false evidence with the intention that such evidence should be used in such proceeding, the Court can start proceeding against him for such act under this provision. In view of wording of the provisions of Section 344, it can be said that first the judgment of the main matter

needs to be delivered. In the judgment, there needs to be some observation with regard to giving of false evidence in the appreciation of evidence. Thus the stage of appreciation comes only when the Court delivering the judgment of main matter. Prior to that it is not open to the Court to appreciate the fact only for the purpose of Section 344 for starting proceeding for giving false evidence.

3. Further, the provision of Section 344(4) shows that when the decision of the Criminal Court is challenged by application or appeal, the proceeding which is started against the witness for giving false evidence get stayed. This is because, it is open to the Appellate Court to make observation with regard to the nature of evidence given by witness. The Appellate Court can come to the conclusion which may not be consistent with the conclusion or opinion formed by the Trial Court. In view of this position of law, it is not proper and legal on the part of the Judge of the Trial Court to issue show cause notice before delivering the judgment in the case.

4. In the result, both petitions are allowed. It was submitted by learned A.P.P. That case turned up into conviction. It will be open to the Court to start the proceeding again if it is felt necessary after the decision

of appeal if any filed by the accused persons against the said decision. The show cause notices are set aside with the aforesaid observations. Both petitions are disposed of as allowed. Rule made absolute in those terms.

(T.V. NALAWADE, J.)

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