

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2035 OF 2003**

Vikas Vithoba Gogawale Applicant
Age : 56 years, Occ.: Clerk (Original
Regional Transport Office, Pune Accused no.6)
Residing at Gulmohar Apartments,
S. No.82/1/18B, Sahakar Nagar,
Pune - 9

Vs.

1 The State of Maharashtra Respondent no.1/
Complainant
2 Shri. Sanjay Sasane. Respondent no.2
Asstt. R.T.O.
R.T.O. Thane, Near Central Jail,
Thane (West) – 400 601

Mrs. Anita Agarwal, Advocate for the Applicant.

Mr. S.R. Agarkar, A.P.P. for Respondent No.1- State.
Mr. Amogh Singh a/w Mr. D.P. Singh i/by Sandesh D. Patil for
Respondent no.2.

Coram : Smt. R.P. SondurBaldota, J.

Date : 2nd February, 2017

JUDGMENT :

1 The applicant herein is accused no.6 in Regular
Criminal Case No.76 of 1989, pending in the Court of Judicial

Magistrate, First Class, Court no.5, Pune. By the present application, he seeks quashing of the order of issuance of process. He had earlier filed application under Section 197 Code of Criminal Procedure ("Cr.P.C." for short) seeking dismissal of the complaint on the ground that the same is not maintainable for want of sanction. The trial court, by its order dtd. 9th May, 1997 has dismissed the application.

2 The brief facts of the prosecution are that respondent no.2- complainant at the relevant time was working as the Motor Vehicle Inspector at the Regional Transport Office ("RTO" for short). He lodged F.I.R. No. 302 of 1988 against the applicant and five others for issuance of 85 bogus duplicate driving licences from the R.T.O., Pune alleging offences punishable under Sections 467, 468, 471, 472, 474 and 420 read 34 Indian Penal Code. The learned Magistrate, Pune issued process against the applicant and five other accused for the above offences. The first argument of the applicant is that there is no sanction obtained before initiating the prosecution, though the applicant is a Government servant and cannot be prosecuted without sanction under the provisions of Section 197 Cr.P.C. The applicant secondly contends in the application that the complaint discloses no offence against him. According to him, he had only done his official duty as per the directions and instructions of his superiors. Once, there was a direction from his superior to do a particular work, if that work is found to be

illegal, no responsibility for the same can be cast upon him. The third argument is of bar under Section 468 Cr.P.C. The complaint herein, according to the applicant was lodged on 3rd September, 1988 and charge-sheet was filed on 18th November, 1995, as such the same is barred under Section 468 Cr.P.C. The next argument of the applicant is that accused no.1- RTO by the order dtd. 25th October, 2001 passed in Criminal Writ Petition No.284 of 1998 has already been discharged. It is argued that if the R.T.O., who has the authority to issue a licence has been discharged, the applicant who is working merely as a Clerk and is at the bottom of the ladder cannot be prosecuted for the same offences.

3 As regards the prior sanction for prosecuting the applicant being a Government servant, in view of the language of Section 197 Cr.P.C, it would be sufficient to mention here that issuance of bogus duplicate driving licences can hardly be said to be an act of the applicant in his official capacity. Consequently, the provisions of Section 197 Cr.P.C. cannot be attracted.

4 The second ground which is on merit, had, in fact, been considered and rejected while deciding the applicant's application filed under Section 197 Cr.P.C.. It is submitted that while preparing the duplicate licences, he was only discharging his duties and the verification of the record was done by his

superiors. At para 3 of his application, he describes his duties as under:

“That the accused no.6 was ordered (orally and in writing directed and instructed) to discharge the duties as such for submission of cases for orders to superior officers, to verify the records for issuance of duplicate licence, noting of change of addresses as per orders in the registers maintained, to prepare notes for orders, to prepare documents as per order of superior and also to complete the records, registers, noting of intimations received from authorities concerned and to send necessary intimation to the concerned authorities as per the orders for his superior”.

The above list of duties indicates that as per the applicant's own case, it was his duty to verify the record for issuance of duplicate licence and prepare a note of the orders of the superiors. Hence, he cannot be allowed to say that he cannot be involved in the process of issuance of bogus duplicate licences and that he was only acting at the dictates of his superiors.

5 The third argument is of delay, in prosecution. In the opinion of this court, the prosecution must get an opportunity to explain the same at the time of trial and the entire prosecution in respect of the offence, which is of a serious nature, and which is in fact against the public at large cannot be scuttled at the initial stage on the ground of delay. Mrs.

Agarwal, the learned advocate appearing for the applicant lastly pleads that it would be harsh to send the applicant to trial after a long gap of more than 20 years. She refers to the decision of the Apex Court, in Srinivas Pal vs. Union Territory of Arunachal Pradesh, reported in A.I.R., 1988, Supreme Court, page 1729, wherein the Apex Court observed that where in respect of the offence of rash and negligent driving and causing death to one and injury to some persons in the vehicle, cognizance of offences under Sections 279, 304A and 338 IPC was taken after a lapse of about 9½ years, the trial would be vitiated. The Apex Court observed that offence against the applicant was of rash and negligent driving, as such, it was neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society. It held that having regard to the nature of the offence, there was enormous delay in proceeding with the criminal prosecution. In its opinion, delay of 9½ years for a trial for rash and negligent driving was too long a time. In the case on hand, the trial is delayed not because of any lapse on the part of the prosecution but because of pendency of the present application from the year 2003 till date. The applicant therefore cannot be permitted to take advantage of the delay caused to the trial by him on account of the order of stay obtained by him.

6 For all the above reasons, there is no merit in the application. Hence, the application is dismissed. In the facts

and circumstances of the case, it is directed that the trial court shall dispose off the trial expeditiously.

(Smt. R.P. SondurBaldota, J.)