IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1167 OF 2017

Mr. Mohammed Yasis S. ... Petitioner/accused No.1
Versus
State of Maharashtra ... Respondent

Mr.C.K.Tripathi, Advocate for the Petitioner.
Mr.S.R.Agarkar, APP for the State/the Respondent.

CORAM : RAVINDRA V.GHUGE, J.
DATE : 21st MARCH, 2017.

P.C. :

1. The Petitioner is aggrieved by the order dated 6th October, 2016 passed by the Trial Court, by which his application for discharge from case No. 242/PW/2006 has been rejected. The Petitioner is also aggrieved by the judgment dated 16th February, 2017, delivered by the Revisional Court, by which his Revision Application has been dismissed.

2. I have heard the submissions of the learned Counsel for the Petitioner for quite some time.

3. An FIR has been registered against the Petitioner on the complaint filed by Mr.Suresh Madhvan on 6th February, 2006, wherein it has been contended that the complainant had perused an advertisement published by “Honnesh Recruitment

Consultancy Ltd." in January, 2005. After going through the advertisement the complainant gathered information that the said firm deals in generating employment in Europe and in Paris. The complainant therefore, approached the firm and met Mr. Yasin Mohammed S. Shaikh, who is the Petitioner herein. The Petitioner introduced a lady by name Shirin in the said office and informed the complainant that both were Directors of the firm.

4. In the entire statement of the complainant, certain dates have been mentioned, on which he had paid the firm various amounts through cheques. Such payments have occurred in between 4th February, 2005 till 15th April, 2005. The contention of the Petitioner is that he was not in India, when the alleged meetings took place between the Petitioner, the complainant and Miss Shirin. Reference is placed upon the entries in the visa/ on the passport to support the case of the Petitioner that he had left Mumbai on 26th November, 2004, and had returned to Mumbai on 8th February, 2005. It is therefore strenuously submitted that when such records indicate the absence of the Petitioner from India, there could not have been any possibility of the complainant meeting the Petitioner in the said office at Vile Parle.

5. I find from the complaint that the complainant has not mentioned that he met the Petitioner in between 27th

November, 2004 to 8th February, 2005. He has stated that he met the Petitioner in the said office, though a date has not been mentioned and Miss Shirin was introduced to him by the Petitioner. Thereafter, payments have been made by the complainant through cheques in the name of the said firm, which were handed over to Miss Shirin.

6. The Petitioner does not dispute that after the complainant travelled out of India on 28th February, 2005 and reached Malaysia, the Petitioner had met the complainant with regard to the difficulty that he faced in Paris as the work permit issued to the complainant by the said firm turned out to be a forged document. It is further stated by the complainant that in the said meeting in Malaysia, the Petitioner had asked him to deposit a further amount of Rs.4,75,000/-, which he has subsequently done by arranging for the said payment through his brother and said amount was delivered to Miss Shirin.

7. It is obvious that the Petitioner is before the Court with an alibi. Unless the alibi is substantially proved, it can not be presumed that the said alibi is established and needs to be accepted even before the Trial. An alibi is always subject to investigation.

8. The Revisional Court while considering the contentions

of the Petitioner has concluded that this entire activity of the Petitioner and the firm needs to be investigated. Not withstanding that the Petitioner contends that he is not the Director or partner of the said firm at issue, it is the case of the complainant that the payments he has made to the said firm through Miss Shirin were on the instructions of the Petitioner. They have been credited to the account of the said firm and he has parted with the said amount in the said transaction.

9. In my view the material available and the claim of alibi putforth by the Petitioner needs to be investigated and that is possible only after a complete trial. It also needs to be investigated as to whether the Petitioner has impersonated the Director of the firm, since the Petitioner contends that he is not related to the said firm and is not its Director. The nexus between the Petitioner and Miss Shirin also needs to be investigated.

10. Considering the above factors, I do not find that the impugned order can been termed as perverse/erroneous. This Petition is devoid of merits and is therefore, dismissed.

(RAVINDRA V.GHUGE, J.)