

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2439 OF 2016

Dr. Jayendra Singham

.....Petitioner

V/s.

The State of Maharashtra

.....Respondent

* * * * *

Mr. Manoj S. Mohite, Advocate for the petitioner.

Mr. V.B. Konde Deshmukh, APP for respondent, State.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 10TH JANUARY, 2017.

P.C. :-

1). This petition is directed against the order dated 12th February, 2015 passed by the Additional Chief Metropolitan Magistrate in C.C. No. 860/PW/2014 rejecting the petitioner's application for discharge and the order dated 2nd February, 2016 passed by the Sessions Court rejecting the petitioner's Criminal Revision Application No. 410 of 2015 against that order.

2). Mr. Mohite, the learned Advocate for the petitioner submits that, absolute illegality has been exhibited by the trial Court in recording plea of the petitioner in C.R. No. 397 of 2016 without

even framing the charge. Later, the petitioner's application for discharge has been dismissed on the ground that the charge has already been framed. That order is confirmed by the Sessions Court in its revisional jurisdiction.

3). The factual background of the matter is as under :-

. The petitioner is a practising Doctor registered with the Maharashtra Council of Indian Medicine, practising for the last 17 years from his Clinic located at Vikhroli. He has been active in initiating action against various bogus Doctors in his locality who are practising medicine without proper authorisation. He had been noticing one such Doctor by name, Dr. Nerekar. On 3rd February, 2012 the petitioner addressed letter to the Deputy Commissioner of Police, Zone-VII expressing his apprehension that he may be trapped in a false criminal case at the instance of Dr. Nerekar since one of his patients had earlier been wrongly treated by Dr. Nerekar. The petitioner has subsequently been arrayed as an accused in C.R. No. 397 of 2013 lodged with Park Site Police Station on 18th October, 2013 for the offences punishable under Section 406 and 420 Indian Penal Code on the complaint of one, Narendra Bahardursingh Rajnarayansingh.

4). On 7th October, 2014 chargesheet was filed in the Court of Additional Chief Metropolitan Magistrate i.e. C.C. No. 860/PW/2014. On the same day, the petitioner appeared before the Court and filed his Vakalatnama and obtained bail. The matter was thereafter adjourned to 16th October, 2014 for framing of charge. The petitioner alleges that on that day, the Court simply asked him

whether he was pleading guilty and on receiving his reply in the negative, he was asked to put signatures on certain papers which later turned out to be his plea. According to him, on that day neither there was charge framed by the trial Court, nor was the charge read over to him for recording his plea.

5). In view of the above peculiar facts of the case, by the order dated 10th August, 2016 passed in this petition, the learned APP was directed to take instructions as to whether the charge is framed in writing and explained to the accused. Accordingly, Mr. Konde Deshmukh, the learned APP has filed, alongwith the report of the Senior P.I. Park Site Police Station, certified copy of the rojnama in the proceedings, the plea of the petitioner recorded on 16th October, 2010 and an intimation received from the Judicial Clerk, Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai by the Senior P.I. Park Site Police Station expressing his inability to supply certified copy of the charge since there is no typed charge available on record. The intimation states that, when the plea of the petitioner was recorded on 16th October, 2014 no charge was typed.

6). Perusal of the rojnama shows that on 7th October, 2014 when the charge-sheet was filed, four documents had been given exhibit numbers. They were charge-sheet (exhibit-1), "V.P." for the accused (Exhibit-2), fresh bail application (Exhibit-3), the surety application (Exhibit-4) and bail bond of accused (Exhibit-5). As per the roznama of the next date i.e. 16th November, 2014, the charge framed was numbered as Exhibit-6. But no exhibit number was

given to the plea of the petitioner recorded on that day. The roznama for 16th October, 2014 reads as under :-

“Resumed. Learned APP present. Accused present with adv. Charge framed. Plea recorded. Accused pleaded not guilty.

Exh 06 :- Charge. Issue SS to PWS. Adj. For evidence to 27/10/14”

The next roznama is dated 27th October, 2014 when the application for discharge filed by the petitioner was taken on record and marked as Exhibit-7. The same reads as under :-

“27/10/14 Resumed. Ld APP present. Accused present with advocate.

Exh 07 :- Application for discharge by accd.

Otherside to say. Adjd for say of APP to 31/10/14”.

Perusal of the certified copy of the plea produced alongwith the report of the police, shows that infact Exhibit-6 was given to the plea of the accused and there is no typed charge in the proceedings with exhibit number given to it. Thus, the record of the proceedings substantiates the allegation of the petitioner that the learned Judge had recorded the plea of the petitioner without framing charge. This would mean that, the trial court had not followed the procedure laid down in Criminal Procedure Code for recording the

plea of the petitioner.

7). The facts disclosed in the present petition infact invites a stern action against the concerned Magistrate presiding over the 31st Court. However, the enquiries reveal that the Mr. M.I.G.D. Shaikh, the learned Magistrate presiding over 31st Additional Chief Metropolitan Magistrate's Court, Vikhroli, Mumbai at the relevant time was suspended from service on 9th June, 2014. Thereafter, he has retired from service on attaining the age of superannuation, and thus escaped any disciplinary action.

8). Considering the above facts and circumstances of the case, the impugned orders cannot be sustained. Therefore, the petition is allowed in terms of prayer clause (a). The petitioner's application for discharge is remanded to the trial court for fresh hearing.

(SMT. R.P. SONDURBALDOTA, J)