

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 268 OF 2017

Dr. Datta S/o Maruti Dhanve
Age: 56 years, Occu: Medical Officer
R/o: Radheshyam Residential Apartment
Flat No. A-102, Shree Nagar, Nanded
Taluka and District – Nanded

... **Petitioner**
(Orig. Accused No.9)

VERSUS

The State of Maharashtra

... **Respondent**

Mr. H.F. Pawar, Advocate for the Petitioner.
Mr. V. M. Kagne, APP for Respondent-State.

CORAM : MANGESH S. PATIL, J.
RESERVED ON: 17.07.2018
PRONOUNCED ON: 08.08.2018

JUDGMENT :

Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally at the stage of admission.

2. Being unable to secure discharge from Regular Criminal Case No.1004 of 2010 pending in the Court of the Chief Judicial Magistrate, Nanded and also in the revision preferred before the learned Additional Sessions Judge, Nanded, the petitioner has knocked the doors of the High Court under Article 227 of the Constitution of India hoping

to get a discharge.

3. In nutshell the facts leading to the filing of this revision are to the effect that a Secretary of Marathwada Region Malaria Employees Association, Parbhani, Branch Hingoli made a complaint to the Collector, Nanded alleging that the candidates for the post of Multipurpose Health Workers who were interviewed on 13.07.2009 had filed forged and bogus experience certificates issued by the District Malaria Officer, Hingoli. Pursuant to such a grievance the Collector ordered an inquiry and further directed one Ratnakar Satav who was the Desk Officer in the health department of the Zilla Parishad, Nanded to inquire into it and lodge a report.

4. During the inquiry it was transpired that fifty percent of the seats were reserved for the candidates holding an experience of working 90 days or more as Field Workers or Multipurpose Health Workers. It was transpired that eight candidates who had applied under that category against reserved posts had produced experience certificates. Those eight candidates were got selected and thereafter the experience certificates produced by them were sent for verification to the issuing authorities. During such verification it was found that the certificates of five of those candidates contained incorrect information. Three of the candidates had never worked as Field Workers or Multipurpose Health Workers and it had also transpired that the certificates were purportedly

issued by the petitioner. Accordingly, Mr. Satav lodged the F.I.R. and the offence was registered as Crime No.235 of 2009 for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code against those eight candidates and the petitioner. Investigation was carried out and in due course of time charge-sheet was filed and the case was registered as R.C.C. No. 1004 of 2010.

5. The petitioner who was arrayed as accused no.9 filed an application (Exhibit-55) under Section 239 of the Code of Criminal Procedure seeking discharge. However, the learned Chief Judicial Magistrate rejected the application and directed the charge to be framed. Feeling aggrieved by such order the petitioner preferred revision under Section 397 of the Code of Criminal Procedure in the Sessions Court at Nanded. However, he failed to convince even to the learned Additional Sessions Judge that the charge was groundless. The revision was dismissed by the order dated 19.08.2016. Hence this writ petition.

6. The learned advocate for the petitioner submitted that the original experience certificates have not been seized during the investigation and could not be sent for comparison of the genuineness of signatures of the petitioner and those appearing on those photocopies of the experience certificates. In fact if the alleged forgery was committed in respect of these experience certificates, the originals should have been

traced out and it is only the originals could have been transmitted for comparison of the signatures. He would further submit that the applicant has been falsely implicated at the fag end of his career merely on the basis of suspicion. In fact, while working as a District Malaria Officer he had lodged a grievance with his superiors by submitting an administrative report that the four employees from his office were running a racket of issuing bogus certificates and still no action was initiated against them. Merely because the signatures on the bogus certificates are purportedly that of the petitioner he could not have been roped in. Even the charge-sheet that was submitted before the Magistrate was incomplete and did not contain any report of the hand writing expert. There was also variance between a copy of the charge-sheet served to the petitioner and the one that was filed in the court of the Magistrate. In the absence of the original forged documents and the report of the hand writing expert the charge was groundless and it was a fit case to discharge the petitioner. The two courts below have unnecessarily overlooked these important aspects and have refused to discharge him. The orders are not sustainable and may be quashed and set aside.

7. The learned A.P.P. strongly opposed the petition. He submitted that in order to seek discharge under Section 239 of the Code of Criminal Procedure, it has to be found that the charge is groundless. The inquiry as to whether the charge could be ultimately proved is not

the consideration for seeking discharge. Even if there is sufficient material which *prima facie* reveals complicity of the petitioner in commission of the crime, the charge cannot be said to be groundless and he cannot be discharged. He would submit that admittedly the petitioner was serving in the office as a District Malaria Officer and the alleged forged experience certificates submitted by the eight candidates are issued under his signature and from his office. Whether the prosecution would be able to ultimately prove that it was the petitioner who had issued the certificates is a matter to be left to be determined during the trial. The prosecution needs to be extended an opportunity to substantiate it and it cannot be stalled at the threshold.

8. The learned A.P.P. further submitted that though the originals of the alleged forged certificates could not be traced, that does not change the scenario. The fact remains that those were the basis for securing the job by the eight candidates and merely because the originals could not be traced the charge cannot be said to be groundless. The Investigating Officer needs to be given an opportunity to explain as to what efforts he had taken to recover the originals and as to how he he could not lay hands on it. However, this fact at this juncture is absolutely irrelevant and the petitioner is not entitled to derive any benefit therefrom.

9. The learned A.P.P. also submitted that the defence of the

petitioner cannot be considered at this juncture based on surmises and conjectures. There is no clinching material which would demonstrate the charge to be groundless. The two courts below have considered all these aspects and have rightly refused to discharge the petitioner. There is no infirmity or illegality committed by them and the writ petition may be dismissed.

10. Needless to state that in order to seek discharge under Section 239 of the Code of Criminal Procedure, it has to be established that the charge is groundless. Though, the word groundless has not been defined anywhere, the literal meaning will have to be taken into consideration. All that is required at the stage of framing of the charge is to see whether a *prima facie* case has been made out or not. The question whether the charge will eventually be proved or not is wholly irrelevant. Therefore, at the stage of framing of the charge, the merits of the case of the prosecution cannot be gone into. True it is that mere suspicion cannot serve as sufficient ground for framing charge in the absence of other material. The word 'groundless' necessarily connotes that no reasonable person can come to the conclusion that there was any ground whatsoever to sustain the charge. Bearing in mind the scope and ambit of Section 239 of the Code of Criminal Procedure let us consider the matter in hand.

11. The whole emphasis of the submission of the learned

advocate for the petitioner is on the fact that the alleged forged certificates recovered by the Investigating Officer are in fact photocopies and not the originals and therefore unless the original is discovered / recovered the charge cannot sustain. Though attractive, the submission, in my considered view, is not tenable in law. It would not be appropriate to argue that in order to prove forgery it is only the original which has to be recovered else it would not constitute forgery. It must be borne in mind that the petitioner is being charged for the offence punishable under Section 420 i.e. cheating, 468 i.e. punishment for forgery and Section 471 which is an offence using the forged documents. It is being alleged by the prosecution that the rest of the eight accused who were the candidates got selected in the process by tendering the alleged forged experience certificates had produced those certificates during the selection process and have secured the jobs thereby dishonestly induced the appointing authority to appoint them believing the certificates to be true. Therefore, in order to constitute these charges, the question whether the certificates produced by those candidates / accused were in fact the originals or the photocopies thereof is absolutely irrelevant. In my considered view, therefore, no emphasis can be laid on this aspect of the matter and based on it one cannot come to the conclusion that the charge itself becomes groundless.

12. Coming to the submission of the learned advocate that the petitioner was not provided with a complete set of charge-sheet with

annexures and there is variance between the charge-sheet and the annexures served to the petitioner and those actually placed before the Magistrate, it is absolutely irrelevant while considering the material before the Magistrate and in ascertaining whether it was sufficient to frame a charge. If at all the petitioner has any grievance in that respect, he always had a right to bring it to the notice of the learned Magistrate but this cannot be said to be a circumstance which would make the charge groundless.

13. Apparently, the certificates tendered by the candidates who are co-accused were purportedly issued under the signature of the petitioner and have been transmitted for comparison of signatures. Merely because while submitting the charge-sheet the report of the hand writing expert was not forth coming, the charge could not have been said to be groundless.

14. In this regard it is pertinent to note that there is a witness who is an employee from the office of the petitioner by name Shaikh Hussain who has specifically stated in his statement under Section 161 of the Code of Criminal Procedure about the petitioner having issued false certificates to some of the candidates by receiving a gratification. Similarly, there are other employees from the same office whose statement have been recorded under Section 161 of the Code of Criminal Procedure and who have also quoted the incidents as to how

the petitioner had indulged in illegalities while working on the post of District Malaria Officer. Therefore, by no stretch of imagination can it be said that the charge is groundless within the meaning of Section 239 of the Code of Criminal Procedure.

15. As regards the submission of the learned advocate for the petitioner that he had even before the current incident submitted a report to his superiors complaining about rampant malpractices in which some of his staff members were engaged into, assuming that it was the case/fact still, it is absolutely irrelevant while considering the request of the petitioner for discharge.

16. The two Courts below have considered all the facts and circumstances and have rightly refused to discharge the petitioner. There is no sufficient basis for this Court to intervene. The writ petition is liable to be dismissed.

17. The writ petition is dismissed.

18. The Rule is discharged.

(MANGESH S. PATIL, J.)