IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1669 OF 2017

Harjit Singh S/o Tirathsingh Sawhney
Age : 56 years, Occ: Business,
R/o Osmanpura, Aurangabad. … **Petitioner**

Vs.

1. The State of Maharashtra,
Through the Superintendent of Police,
Aurangabad.

2. Paramjitsingh S/o Tirathsingh Sawhney
Age: 51 years, Occ: Unknown,
R/o Near N.C.C. Canteen, Osmanpura,
Dist. Aurangabad.

3. Mr. B.R. Pande,
Age: 60 years, Occ: Advocate,
R/o 1, Blue Bell Apartment,
Behind Hotel Darling, New Osmanpura,
Aurangabad.

4. Mr. A.K. Mishra,
Age: 48 years, Occ: Advocate,
R/o House No.2-7-97, Aurangpura,
Aurangabad.

5. Mr. Dnyaneshwar S/o Sonaji Gulaskar,
Age: 50 years, Occ: Service as a Jr. Clerk,
District Court, Aurangabad
R/o Kotla Colony, Adalat Road,
Aurangabad. … **Respondents**

Mr. Harjit Singh S/o Tirathsingh Sawhney, Party in person.
Mr. A.R. Kale, APP for Respondent-State.
Mr. V.L. Bidve h/f. A.R. Rathod, Advocate for Respondent No. 2.
Mr. Shriram S. Jaiswal h/f. Mr. M.R. Jadhav, Advocate for Respondent No.3.
Respondent Nos. 4 and 5 served.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 09.07.2018
DATE OF PRONOUNCING THE JUDGMENT : 01.08.2018

<u>JUDGMENT</u> :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. This is a petition under Article 227 of the Constitution of India.

3. The chequered history leading to filing of the writ petition may be summarised as under:

The petitioner lodged a complaint against the respondent no.2 alleging that by forging his signature on the Form no.9 and similarly by forging the application (Exhibit-65) the latter attempted to get his name mutated in the property record of a house property. Accordingly, the matter was investigated and a charge-sheet was filed and Regular Criminal Case No. 1361 of 2003 commenced. After recording of the evidence of the prosecution the respondent no.2 was under examined Section 313 of the Cr.P.C. He admitted to have submitted the application (Exhibit-65). However, he filed an application (Exhibit-79) to send that document to the handwriting expert for comparing the genuine signatures of the petitioner with the signature that was appearing on the document (Exhibit-65). Similarly, even the prosecutor submitted an application (Exhibit-84) for transmitting the same document to the handwriting expert. When the Magistrate took up the applications (Exhibit-79 and Exhibit-84) for hearing, the questioned document (Exhibit-65) was not traceable in the record and proceedings of the case. The public prosecutor as well as the concerned bench Clerk also could not find it in the record and proceedings. Then, the petitioner was allowed to search the record and proceedings and it was found by him that the document (Exhibit-65) was there in the record and proceedings, however a page was pasted on it to the extent of half portion thereby tampering it.

Obviously, feeling aggrieved by such tampering the petitioner submitted an application presumably under Section 340 of the Cr.P.C. leading to an enquiry into this act of tampering and for initiating appropriate legal proceeding against person responsible for the tampering. This application was registered as M.A. No. 1010 of 2011 and the Magistrate conducted necessary enquiry. By a reasoned order dated 08.07.2014 he directed process to be issued only against respondent no.2 and further directed the Assistant Superintendent of Court of C.J.M. to register a Summary Criminal Case. Accordingly, the complaint was registered as S.C.C. No. 6739 of 2014 for the offence punishable under Section 489 (tampering with property mark with an intent to cause injury) of the I.P.C.

It appears that the petitioner was not content with the process that was initiated only against the respondent no.2. He submitted an application (Exhibit-26) in S.C.C. No. 6739 of 2014 requesting to add learned advocates Mr. B.R. Pande and Mr. A.K. Mishra who were representing the respondent no.2 as his lawyers in R.C.C. No. 1361 of 2003. He also requested to implead in the array of accused the then Clerk of the Court by name Mr. D.S. Gulaskar who was in custody of the record and proceedings of R.C.C. No. 1361 of 2003. He alleged that advocate Mr. B.R. Pande who is the respondent no.3 herein was representing the respondent no.2 in the Regular Criminal Case, he was aware about the importance of the document (Exhibit-65) and in order to save the respondent no.2 from being convicted had played role in tampering the document (Exhibit-65). He further alleged that even advocate Mr. A.K. Mishra who is respondent no.4 herein was handling the record and proceedings of the R.C.C. No. 1361 of 2003 even without any authority. The fact was brought to the notice of the Court by submitting application (Exhibit-54 and Exhibit-86), it is only after such an objection was raised that he submitted his Vakalatnama. He has also helped the respondent no.2 in tampering the document (Exhibit-65).

The petitioner also alleged that even the then Clerk Mr. D.S. Gulaskar who is the respondent no.5 herein was having custody of the record and proceedings and in active connivance with respondent nos. 2

to 4 has helped them in tampering the document (Exhibit-65). Thus, he alleged that even the respondent nos. 3 to 5 were liable to be prosecuted and requested to add them as co-accused.

The learned Magistrate by the order dated 17.10.2014 rejected the application of the petitioner (Exhibit-26). Being aggrieved and dissatisfied by both these orders, the order dated 08.07.2014 issuing process only against respondent no.2 and the order dated 17.10.2014 rejecting his application (Exhibit-26) to add the respondent nos.3 to 5 as co-accused in S.C.C. No. 6739 of 2014 the petitioner preferred Criminal Revision No. 291 of 2014. The learned Additional Sessions Judge by the order dated 17.07.2017 rejected the revision and being aggrieved by such rejection the petitioner is before this Court.

4. The petitioner who is contesting his own cause submitted that the entire prosecution case against the respondent no.2 in the form of R.C.C. No. 1361 of 2003 was revolving around the document (Exhibit-65). The trial had come to an end. However, during examination under Section 313 of the Cr.P.C., the respondent no.2 had admitted to have submitted the document (Exhibit-65) and when it to be sent to the handwriting expert, the tampering has taken place. The respondent nos. 2 and 3 represented the respondent no.2 as his advocates in the trial and both of them were fully aware and have taken active part in tampering the document. In fact respondent no.4 was

handling the record and proceedings even when he was not duly representing the respondent no.2 by filing any Vakalatnama and the fact was brought to the notice of the Magistrate by submitting application (Exhibit-54). It is only thereafter that he submitted his Vakalatnama. Therefore *prima facie*, the respondent nos.3 and 4 have played role in tampering the document (Exhibit-65). Without their active connivance the respondent no.2 could not have been able to handle the record and proceedings enabling him to indulge in tampering.

5. Similarly, the petitioner further submits that since the respondent no.4 as a Clerk of the Court was the custodian of the record and proceedings, the tampering could not have been possible but for his active involvement. He would further point out that conduct of the respondent no.5 in not bringing such tampering to the notice of the Magistrate is a material circumstance from which it can be inferred that even he is *prima facie* responsible and had aided the respondent no.2 in tampering the document (Exhibit-65). Ignoring all these vital aspects the learned Magistrate has refused to take cognisance against respondent nos.3 to 5. Even the learned Additional Sessions Judge has not considered all these material aspects and has dismissed the revision. The order passed by the learned Additional Sessions Judge is perverse and arbitrary. The orders passed by the Courts below may be set aside and the process may be directed to be issued against respondent nos.3 to 5 or they may be directed to be impleaded as an accused in the S.C.C.

No. 6739 of 2014.

6. The learned A.P.P. requested to decide the petition on merits.

7. The respondent nos.3 to 5 were duly served but only the respondent no.3 has appeared and I have heard his learned advocate. His learned advocate submitted that in the absence of any *prima facie* material on the record showing complicity of the respondent no.3 in commission of the crime, no fault can be found with the order passed by the Magistrate in directing the process to be issued only against respondent no.2 who was the apparent beneficiary of such tampering. Merely because respondent no.3 was representing him in his professional capacity, in the absence of any material, he could not have been implicated. The learned Magistrate therefore was right in not issuing process against the respondent no.3.

8. The learned advocate for the respondent no.3 further submitted that there is no perversity or arbitrariness in the order passed by the Magistrate and in the absence of which the learned Additional Sessions Judge could not have legally exercised the powers vested in him under Section 397 of the Cr.P.C. No fault therefore can be found with the impugned order passed by the learned Additional Sessions Judge in rejecting the revision. Even on facts, the learned Additional Sessions Judge has clearly pointed out that there was no material sufficient enough to show complicity of the respondent no.3 in

commission of the offence and therefore has rightly concluded that there was no material to issue process against him even on merits. The learned advocate for the respondent no.3 also submitted that since there is no apparent illegality committed by the learned Additional Sessions Judge this Court should not interfere with the orders passed by the Courts below without any strong basis. The learned advocate would point that the learned Additional Sessions Judge has made it quite clear that at that juncture there was no sufficient material and therefore no process could be issued against respondent nos.3 to 5, however the learned Judge has not shut the doors completely. He has specifically made it clear that if during the course of recording of evidence some material is revealed against the respondent nos.3 to 5 they can be added as co-accused at an appropriate stage. He therefore prayed to dismiss the petition.

9. One need not repeat the facts. Obviously, document (Exhibit-65) was the questioned document. It was alleged in R.C.C. No. 1361 of 2003 that the respondent no.2 had forged it by putting signature of the petitioner and it was to be sent to the handwriting expert but before the order could be passed on the applications for transmission of these documents to the handwriting expert the document (Exhibit-65) was tampered with by pasting a paper so as to cover half of its portion. Obviously, the matter was serious and needed enquiry and investigation. The learned Magistrate rightly directed the

offence to be registered and initiated process.

10. However, though the respondent nos.3 and 4 were representing the respondent no.2 who is the prime accused during the Regular Criminal Case No. 1361 of 2003, in the absence of any material, merely because they were representing the respondent no.2 one cannot readily draw any inference about their complicity in the crime. Similarly, merely because the respondent no.5 as the Clerk of the Court was the custodian of the record and proceedings, no similar inference could be deducible against him. Obviously, if the record and proceedings was in his custody, he could be proceeded against administratively if the disciplinary authority thinks so but it would be far-fetched at this juncture to draw any inference about his active involvement in commission of the crime. Such an inference could not have been based on mere surmises and conjectures. There was no objective material before the Magistrate as well as before the learned Additional Sessions Judge to show that the respondent no.5 was also actively involved in tampering the document (Exhibit-65).

11. This is not to completely rule out any possibility of involvement of the respondent nos.3 to 5 in commission of the crime. As has been rightly observed by the learned Additional Sessions Judge the doors are always open and if during the hearing of Summary Criminal Case No. 6739 of 2014 some material emerges showing that the

respondent nos. 3 to 5 or any of them was also involved, certainly the Magistrate has powers under Section 319 of the Cr.P.C. to implead them as co-accused. However, asking them to be arrayed as an accused at this stage of the trial based on some assumptions would not be appropriate. By no stretch of imagination the orders passed by the Magistrate can be said to be either perverse, arbitrary or capricious which could have enabled the learned Additional Sessions Judge to interfere with the order under the revisional powers vested in him under Section 397 of the Cr.P.C.

12. In my considered opinion, there was absolutely no material before the Courts below sufficient enough to persuade them to either issue process against the respondent nos.3 to 5 or even to direct their impleadment in the array of accused in Summary Criminal Case No. 6739 of 2014. The writ petition is therefore liable to be dismissed.

13. The writ petition is dismissed.

14. The rule is discharged

(MANGESH S. PATIL, J.)

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