IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITON NO.4149 OF 2017

Sidramappa Basavanappa Jetagi .. Petitioner
Vs.
The State of Maharashtra .. Respondent

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Mr.Abhaykumar Apte, Advocate for the Petitioner.
Ms.P.N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 18, 2018.

P.C. :

The petitioner has invoked Article 227 of the Constitution of India and the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, challenging the order dated 12th June, 2017, rejecting application for discharge as well as the orders framing charge dated 13th June, 2017.

2 The prosecution case is that the accused have committed offences punishable under Sections 409, 420, 467, 468, 417, 474, 120B and 201 of IPC and Sections 13(1)(c), 13(1)(d), 13(1) and 13(2) of the Prevention of Corruption Act. It is alleged that the accused being public servants committed criminal misconduct by misappropriating the amount entrusted to

them as public servants. The accused abused their position as public servants and with a view to gain peculiar advantage, misappropriated the government money. It is further alleged that the accused have committed forgery of documents purportedly to be a valuable security, such as Administrative Sanction Orders, Muster Roll, Employment Guarantee Scheme with intent to commit, fraud and misappropriate the amount of Rs.2,22,592/-. It is alleged that the accused at the relevant time used the documents as genuine, although, the same were forged and committed the alleged offences. The accused have used the said documents to misappropriate the amount and have also tried to destroy the evidence and committed the offence punishable under Section 201 of the Indian Penal Code (IPC).

2 The petitioner preferred an application for discharge before the trial Court which was rejected on 12th June, 2017. On the next date i.e. on 13th June, 2017, the charges were framed against all the accused under the penal offences as stated above.

3 The petitioner's grievance is that there is no sufficient evidence to frame charge against him. Although, the application was rejected on 12th June, 2017, the trial Court without following

due process of law framed the charge hurriedly on 13th June, 2017. It is submitted that the provisions of Sections 226 and 228 were not complied and the accused were not given opportunity to defend the said charge. It is submitted that only allegation against petitioner is that he has not taken correct measures of Compartment Bunding work in village Doddi of Gut No.1/1 and ½ and without taking correct measurements, he recommended the bill for passing and/or making endorsement as “Verified and found correct”. It is submitted that the checking team did not give details in respect of method which they had adopted. It is submitted that he has been falsely implicated in this case only on the basis of bald allegations and he cannot be compelled to face the prosecution. The petitioner was attached to Taluka Agricultural Office, North as Supervisor. The Taluka is divided into two parts and one part is under the supervision of the petitioner and the other part being under supervision of the co-accused Birajdar. The misappropriation of government money pertains to E.G.S. work and the work in question was relating to the jurisdiction of the co-accused Arjun Birajdar. The petitioner was not concerned with the supervision of the said work. There is no reason for the petitioner to visit the spot or to do any kind of work. He is being implicated only on the basis of the statement of the co-accused. It is submitted that accepting the prosecution case as it is, no case was made out to proceed against the petitioner and to frame charge against him.

4 Learned APP opposed the relief prayed for by the petitioner. It is submitted that the accused were charged for serious offences. Specific role has been attributed to the present petitioner. He has acted in connivance with other accused. The evidence on record *prima facie* establishes the case for framing of charge. At the stage of framing of charge the Court was not required to hold the roving inquiry and, there is no reason to interfere in the orders passed by the trial Court. It is submitted that the petitioner was heard while deciding his application for discharge and with cogent reasons the application has been rejected. Therefore, the question of violation of provisions of Sections 226, 227 and 228 does not arise. Trial Court was empowered to frame the charge after rejection of the discharge application. The defence, raised by the petitioner to be appreciated at the time of trial and for framing of charge against the petitioner *prima facie* case is required to be made out and the documents on record justifies framing of charge.

5 Trial Court has rejected the application on 12th June, 2017. Petitioner and the prosecution were heard at length. The order passed by the trial Court refers to the reason for not granting the relief sought by the petitioner. The submissions advanced at the instance of the petitioner were dealt with while rejecting the application for discharge. Learned Judge has perused the documents on record such as first information report and the statement of witnesses while passing the impugned order. The application was opposed by the prosecution on the ground that the contents of FIR and the statement of witnesses makes out case against the petitioner to proceed against him. The investigation reveals that accused no.4–petitioner has committed the alleged offence. It was also pointed out that there is sufficient evidence to proceed against the petitioner, and, *prima facie,* he is involved in commission of offence. The evidence is required to be adduced to establish the charges and the defence of the accused will be dealt with during the trial.

6 First Information Report in this case was filed by one Dhanaji Toraskar. In the FIR, it is stated that accused Monoj Nimbalkar, who was working in employment guarantee scheme in the office of the District Collector forged the signature of District

Collector on administrative sanction order. He forged the signature of Deputy Collector E.G.S. on the said order. On 21st July, 2005, the then District Collector holding meeting gave orders. From 1st October, 2004 to 12th July, 2005, there were 21 administrative sanction orders with regards to the area of south Solapur. The aforesaid accused prepared the false and forged administrative orders and the signatures of the officials as stated above. It is the prosecution case that the accused in collusion with each other used the said fabricated documents such as administrative sanction order as true and genuine and submitted the same to concerned enforcement machinery. Without obtaining work order from Tahsildar, the work was started. On verification of all the orders they were found to be fabricated. The Deputy Engineer, Branch Engineer and the Assistant Engineer made technical assessment of the work. Report was received by the office of District Collector, Solapur, and, as per the said report certain amounts were shown excessive in work and found to be misappropriated. It is alleged that the administrative sanction order given to the Tahasildar, South Solapur and Sub-divisional Agricultural Office. However, the same was used for commission of offence was not forwarded to Tahasildar, South Solapur and Sub-divisional Agricultural Office. The forged documents were given to Assistant Agricultural Officer and Supervisor Agricultur Officer. Revised administrative sanction order was not obtained. The investigation was conducted by the police in detail. Statements of various persons were recorded. On the basis of this material collected by the investigating officer, charge-sheet was filed. Taking into consideration all these aspects, the trial/special Court has observed that the material on record show that criminal conspiracy was hatched by the accused to misappropriate the government funds by putting forth fabricated sanctioned orders of District Collector, Solapur, which clearly amounts to misconduct within the provisions of Corruption Act. In the present case, the circumstances prior and after the occurrence show that all the accused had acted in pursuant to the criminal conspiracy. They also indulged in destroying the forged and fabricated signature of the Collector which establishes deep rooted conspiracy. On the basis of the aforesaid observations, the trial Court proceeded to reject the application for discharge. In pursuant to that the charge is framed on 13th July, 2017. Considering the material on record, it is apparent that *prima facie* case was made out to frame the charge. The defence of the accused that he had no concern, and, that he was not required to visit the place for taking measurement etc., or that he has been falsely implicated in this case are matters of evidence which can be agitated at the time of trial. The submission that it was the responsibility of another accused to perform the duty which is the subject matter of this case and that the applicant was not having jurisdiction to perform the said duty can be considered during the trial. The prosecution alleges that there was a deep routed conspiracy. It is the prosecution case that it was incumbent upon the applicant to visit place of work and verify the nature of work but without doing so he confirmed the entries in muster roll and measurement book and although the same were false, certified to be correct. The acts committed by petitioner amounts to misconduct within purview of POCSO Act. While framing charge, the Court is not required to enter into a roving inquiry and what is required is that a *prima facie* case should be made out to proceed against the accused. The prosecution must be given an opportunity to adduce evidence. Thus, this is not the stage to appreciate the statement advanced by the learned counsel for the petitioner. The other grievance made by the petitioner's advocate is that the trial Court hurriedly framed the charge on the next date without giving opportunity to the petitioner. After the application for discharge is rejected, the Court is empowered to proceed with order framing charge. Section 228 of the Cr.P.C.

refers to the hearing as contemplated under Section 227 of Cr.P.C. The application for discharge was rejected after hearing the counsel for the petitioner and the prosecution and the trial Court has passed a detail order assigning reasons for rejecting the said application and in the said order itself it has been stated that the prosecution has made out a case for framing charge. The trial Court, thereafter, proceeded to frame charge on the next date. There is no infirmity in the order framing charge.

7 In the circumstances, no case is made out to entertain this petition and the same is required to be rejected.

8 Hence, I pass the following order:

:: O R D E R ::

(i) Criminal Writ Petition No.4149 of 2017, is rejected;

(ii) It is made clear that the observations made in this order are only for adjudicating the present writ petition and the trial Court shall not be influenced by the same during the trial.

(**PRAKASH D. NAIK, J.)**