

Vikas Laxman Devkar ...Petitioner
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Ashutosh S. Khandeparkar for the Petitioner

Mr. K. V. Saste, A.P.P for the Respondent No.1-State

Mr. Vivek S. Babar for the Respondent No. 2

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
TUESDAY, 31st JULY, 2018**

P.C. :

1 The above Writ Petition has been filed *inter alia* for the relief of quashing and setting aside the order dated 1st February 2018 passed on Exhibit 33 by the learned Additional Chief Metropolitan Magistrate, 5th Court, Bhoiwada, Mumbai, to take necessary legal action and direct the filing of the FIR against the Investigating Officer API Mr. Kailash N. Avhad and any other person involved or responsible for manipulation in the charge-sheet being No. CC/2820/PW/2014 pending on the file of the learned Additional Chief Metropolitan Magistrate, 5th Court, Bhoiwada, Mumbai.

2 The second relief is predicated on the ground that the Investigating Officer has removed certain papers which, according to the learned counsel for the Petitioner, are numbering above 1000 from the charge-sheet. Significantly, the Petitioner has not pointed out what are those papers which are allegedly removed by the Investigating Officer from the compilation of the charge-sheet. The learned counsel appearing for the Petitioner Mr. Khandeparkar sought to urge the said contention on the basis of the presumption of his client i.e. the Petitioner herein, who is an accused in the case in question, which involves offences punishable under Sections 466, 467, etc. of the Indian Penal Code. We found that the submission of Mr. Khandeparkar in that behalf was based on conjectures and surmises.

3 The Petitioner had filed an application before the trial Court Exhibit 33 making the same grievance as is sought to be made in the above Petition. The learned Magistrate has issued some direction as regards the renumbering of the papers comprised with the charge-sheet as it was found that the numbering of the papers was not in a numerical order but at times, a jump of 100 pages were taken and some papers were repeated. The learned counsel Mr. Khandeparkar, to buttress his allegation in respect of

the removal of the papers by the Investigating Officer, sought to place reliance on the document which is at page 289 of the writ paper-book compilation, which is the say on Exhibit 33, filed by the Investigating Officer Mr. Kailash Avhad. According to the learned counsel Mr. Khandeparkar, the Investigating Officer has admitted the removal of the papers from the charge-sheet in the said reply.

4 We have perused the said reply. In our view, the learned counsel Mr. Khandeparkar is misconstruing the said reply. In the said reply, the Investigating Officer has said nothing of the sort but has only stated that pursuant to the permission granted, the pages were renumbered.

5 The learned counsel appearing for the Respondent No. 2 drew our attention to page 301 i.e. the order passed on Exhibit 37, which was an application filed by the accused i.e. the Petitioner herein before the learned Magistrate for adjournment. In the said application, the learned Magistrate has recorded that the Petitioner herein who is the accused No. 1, has not accepted the charge-sheet on the ground that he has to scrutinize the documents and thereafter he would accept the charge-sheet. Hence, even as on 8th September 2016, the Petitioner had not accepted the charge-sheet. It

was the submission of the learned counsel appearing for the complainant i.e. the Respondent No. 2 herein that the non-acceptance of the charge-sheet of the Petitioner is a dilatory tactic adopted by the Petitioner so as to delay the trial.

6 As indicated above, the Petitioner had filed Exhibit 33 before the trial Court on the self-same issue. The said Application has been adjudicated by the learned Magistrate. The learned Magistrate, from the reading of the order, it appears, did not find anything amiss as alleged by the Petitioner. Since the trial Court which is in seisin of the case in question has deemed it appropriate to dispose of the Application filed by the Petitioner, we, in our jurisdiction under Article 226 of the Constitution of India, do not deem it appropriate to once again embark upon an exercise of inquiring into the allegations made by the Petitioner, especially having regard to the facts as aforestated.

7 The Writ Petition is accordingly dismissed.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.