

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 770 of 2019

Atish s/o Samadhan Ingale,
Age 36 years, Occ. Service,
R/o. Saikrupa Society, Plot
No. 5/6, S.No. 18, Ingale
Nagar, Warje Naka, Pune

... **Petitioner.**

VERSUS

The State of Maharashtra.

... **Respondent.**

...

Advocate for the petitioner : Mr. D. S. Manorkar.
APP for the respondent : Mr. B. V. Virdhe.

CORAM : MANGESH S. PATIL, J.

DATE : 01/10/2019

ORAL JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. Learned APP waives service for the respondent. On the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is accused No. 3 in S.C.C. No. 191/2014 pending on the file of the Judicial Magistrate First Class, Vaijapur for the offences punishable under section 304A, 337, 338 read with section 34 of the Indian Penal Code and Section 52, 56 and 43 of the Maharashtra Regional and Town Planning Act. By filing application (Exhibit 51) under section 239 of the Code of Criminal Procedure he

claimed discharge. The learned Magistrate by the order dated 30.06.2018 rejected the application. He therefore preferred Criminal Revision No. 52/2018 under section 397 of the Code of Criminal Procedure but the learned Additional Sessions Judge dismissed it. Hence this Writ Petition.

3. Shortly stated the prosecution case as can be made out from the charge-sheet is to the effect that the accused No. 1 and 2 had started construction of upper floor on their plot. It is alleged that the construction being carried out was unauthorized and illegal. A 11 K.V. Feeder line of electricity supply was passing by barely at a distance of half metre from the construction. On 25.02.2013 a construction worker while he was working on the upper floor came in contact with the live wire. As a result he got electrocuted, sustained severe burns and succumbed couple of days later.

4. It is further alleged that as a result of such incident the live wire got cut and fell on the ground and unfortunately the informant lady whose house was on the ground floor also got electrocuted by entangling in the wire causing severe burns to both her legs which subsequently had to be amputated.

5. It is alleged that the petitioner herein who was then serving

as a Junior Engineer in Maharashtra State Electricity Distribution Company Limited (hereinafter referred as 'MSEDCL') and was posted in the Section Office at Vaijapur (urban area) and his Assistant one Sayyad Jamil who has been arrayed as accused No. 4 had rashly and negligently not maintained the live wires properly which resulted in occurrence of both the incidents. Accordingly the accused No. 1 and 2 being the owners of the property where the illegal construction was going on and the petitioner and the other accused being the employees of the MSEDCL were arrested. The investigation was carried out and they were charge-sheeted. As is mentioned herein above the petitioner preferred application (Exhibit 51) under section 239 of the Code of Criminal Procedure and sought discharge. The learned Magistrate rejected the application and the order has been confirmed by the Revisional Court. Hence this Writ petition.

6. The learned advocate for the petitioner vehemently submits that there is no dispute about occurrence of the incident. Indeed it was an unfortunate incident. However, the material on record collected by the Investigating Officer falls too short to even prima facie suggest that the incident had occurred because of any rashness or negligence on petitioner's part. There is no basis to draw such an inference. He would submit that the petitioner is being implicated

merely because he was posted in the office under which jurisdiction the area was. But merely because of this reason one cannot jump to the conclusion about any role attributable to him. It is only because of the first episode wherein the deceased had come in contact with the live wire while he was working on the construction site that the supply wire got cut and fell on the ground and the informant got entangled and also sustained severe burns. There is absolutely no material to show that because of any fault on his part the live wire was cut and resulted in the incident.

7. The learned advocate further pointed out that the charge-sheet includes a report by Electric Inspector of an independent agency dated 22.07.2013 wherein the Electric Inspector had specifically mentioned as a result of enquiry that it is because of the deceased having come in contact with the live wires that one of the conductors of the feeder got cut and fell on the ground and the informant came in contact with it. He specifically mentioned that the safety system available in the Sub Station could not work and the incident had taken place and the MSEDCL was responsible for it. If this is so, the petitioner alone could not have been held responsible much less attributing any rashness and negligence on his part. The Investigating Officer had not apparently made any enquiry with the Officers of the

MSEDCL so as to firstly ascertain the nature of duties and responsibilities of the petitioner and secondly to ascertain how far the incident could be attributable to his duties. In the absence of such an enquiry, the Investigating Officer has roped the petitioner simply on the basis of some subjective inference which he could not have drawn. Thus the evidence collected by the Investigating Officer and submitted with the charge-sheet even if taken at its face value falls too short to demonstrate that the incident had taken place because of rashness or negligence on the part of the petitioner. The charge is groundless. He deserves to be discharged.

8. The learned advocate for the petitioner also submits that since even according to prosecution the incident had taken place because of the rashness and negligence on the part of the petitioner in discharge of his official duties. If that be so, being a Public Servant, no charge-sheet could have been filed without sanction under section 197 of the Code of Criminal Procedure and the Magistrate ought not to have taken cognizance for want of such sanction. Therefore even for this reason, the petitioner is entitled to be discharged.

9. Lastly, the learned advocate for the petitioner submits that though few witnesses including the informant have stated about having noticed that sparking was going on on a nearby pole and about

which they had made oral complaint with the petitioner's office, there is no material to substantiate this fact. Besides, there is no connecting material available in the charge-sheet to show that sparking had any logical and scientific nexus with the incident. Therefore such material is also of no consequence.

10. The learned A.P.P. supports the orders of both the Courts below. He submits that there is enough material to frame the charge even against the petitioner. It cannot be said that it is groundless. He was incharge of the MSEDCL Office having the responsibility of supervision in maintaining the live wires. It got cut for want of such maintenance causing the incident. There is a specific statement of informant Usha and another persons that sparking was taking place on the electrical pole near her house and she had intimated about it to the MSEDCL Office, but it was not repaired. This much of material is sufficient to show that the petitioner had not discharged his duties diligently and had acted in rash and negligent manner in maintaining supply lines. The proposed defence cannot be taken into consideration at this juncture and the charge cannot be said to be groundless. The prosecution deserves to be accorded an opportunity to substantiate the allegations during the trial.

11. I have carefully gone through the entire charge-sheet with the

able assistance of the learned A.P.P and the learned advocate for the petitioner. As can be gathered, the material collected by the Investigating Officer and annexed to the charge-sheet, if I may say so, is in bits and pieces. The statements of witnesses and other material only prima facie show that a building under construction situate by the side of the supply line of the MSEDCL. The construction was apparently unauthorized and illegal for which the accused No. 1 and 2 are being independently charged for the offences under the Maharashtra Regional and Town Planning Act. The supply line was passing barely half metre away from this construction. The deceased was a labourer working on that construction site and got electrocuted by such live wire passing nearby. It appears that the electricity supply line got cut and fell to the ground. The informant lady got entangled in the live wire and sustained severe burns to both her legs which thereafter had to be amputated.

12. The petitioner is an employee of the MSEDCL and at the relevant time was posted at Sub Station at Vaijapur (Urban area). Then there is oral account of the informant and couple of other witnesses stating that they were noticing that it was sparking on nearby electricity supply pole and about which they had repeatedly lodged oral complaints. Then there is an opinion of Electrical Inspector

of an independent office dated 22.07.2013 mentioning that after the first episode wherein the deceased got electrocuted, the safety measure fitted in the Sub Station which ought to have averted electrical supply failed to function and as a result, in spite of the wire got cut the electrical supply continued to pass through it and the informant having come in contact also got electrocuted and thus the MSEDCL was responsible for failure of such safety measure.

13. All the aforementioned circumstances even if they are taken at their face value are not sufficient to draw any inference about the incident having taken place because of any rashness or negligence on the part of the petitioner. The links to connect the aforementioned circumstances are conspicuously missing. Firstly even if the petitioner was serving as a Junior Engineer in the Sub Station of MSEDCL Vaijapur (Urban area) at the material time, there is absolutely no material available with the charge-sheet to show that he had failed to discharge official duties and responsibilities. No enquiry seems to have been made with his superiors to reach to a conclusion as to in what manner the responsibility could be fixed on him. There is no material to show that it was the lack of maintenance of the live wires attributable to the duties and responsibilities of the petitioner that the first episode of deceased getting electrocuted had taken place, which

thereafter triggered the second episode because of the failure of the safety machinery fitted in the Sub Station refusing to trigger. The report of the expert/ Electrical Inspector dated 22.07.2013 also nowhere attributes or even hints about any rashness or negligence on the part of the petitioner to be either the cause or the *causa causan* for the incident. This being a document which forms a part of charge-sheet is indeed a document of impeccable character and can certainly be gone into. If the Investigating Officer had received this report, he could have carried out further investigation to ascertain as to how the petitioner can be linked to the incident. The charge-sheet and its accompaniments do not demonstrate any thing done on these lines by the Investigating Officer, the inference about the petitioner's involvement would be far fetched.

14. All in all, accepting the charge-sheet and its accompaniment at its face value, there is absolutely no material even to remotely draw any inference about any rashness or negligence on the part of the petitioner as a cause for the incident.

15. Accepting that the informant and few other witnesses had spoken about having made grievance regarding the sparking they were noticing on the nearby electrical pole still that per se would be of no consequence. Firstly there is no material to show that the grievance

was actually addressed to the petitioner and secondly that the sparking had led to the incident which is in fact not the prosecution case at all. There is absolutely no material to say that for want of proper maintenance of the live wires the sparking was going on. There is no material to show that as a result of such sparking the live wire got cut. There is no material to show that it is thereafter that the deceased came in contact with such wire and got electrocuted and the informant also sustained injury. Therefore accepting the entire material at its face value, it falls too short to even prima facie reveal any substance to proceed against the petitioner. The charge is indeed groundless within the meaning of Section 239 of the Code of Criminal Procedure. Both the Courts below have not scrutinized the aforementioned facts and circumstances and seem to have swayed away by death of one person and grievous injury to the informant being attributable to the electrocution.

16. Again, even the two Courts below have not addressed the other important issue regarding want of sanction under section 197 of the Code of Criminal Procedure to prosecute the petitioner. Being a Public Servant, since the allegations are about the offences having been committed in discharge of his official duties, it was imperative for the investigating machinery to have sought a sanction under

section 197 of the Code of Criminal Procedure from the Appointing Authority of the petitioner without which, the Magistrate would not have jurisdiction to take cognizance. Therefore even for this reason, the petitioner was entitled to discharge but the Courts below have not considered this aspect and have refused to discharge the petitioner. The orders of the two Courts below suffer from gross illegality. The observations and the conclusions are quite perverse and arbitrary and have resulted in miscarriage of justice. This Court therefore needs to intervene under the writ jurisdiction.

17. The Writ Petition is allowed.

18. The order passed by the Magistrate and the one confirming it passed by the learned Additional Sessions Judge are quashed and set aside. The application (Exhibit 51) filed by the petitioner is allowed and he is discharged under section 239 of the Code of Criminal Procedure.

19. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

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