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

**CRIMINAL WRIT PETITION NO. 1002 OF 2018**

Dr. Adityapuram s/o Govindkrishnan
Sheshadrinathan, Age 66 years,
Occ. Service (on extension) as Vice
President (Technical), M/s. Shreya
Life Sciences Private Limited, Mumbai,
R/o. 11, 'Om Building', Near Indian
Gyamkhana, Matunga, Mumbai. **... Petitioner**

VERSUS

The State of Maharashtra,
Through the Police Sub Inspector,
Kranti Chowk Police Station,
Aurangabad. **... Respondent.**

...

Advocate for Petitioner : Mr. Deshmukh Rajendra S.
Advocate for Respondent : Mr. B.V. Virdhe.

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| **CORAM** | : | **MANGESH S. PATIL, J.** |
| **DATE** | : | **25/09/2019** |

**JUDGMENT :**

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

2. The petitioner is the accused No. 2 in Regular Criminal Case No. 596/2010 pending on the file of J.M.F.C. Aurangabad for the

offences punishable under section 420, 465, 468, 471 etc. read with section 34 of the Indian Penal Code. He preferred an application (Exhibit 13) under section 239 of the Code of Criminal Procedure seeking discharge. It was dismissed by the learned Magistrate by the order dated 19.01.2012. Even the revision preferred by him under section 397 of the Code of Criminal Procedure has been rejected by the Additional Sessions Judge by the impugned order. Hence this Writ Petition.

3. In sum and substance prosecution case is to the effect that the Food & Drug Administration at Aurangabad received several Manufacturing and Marketing Certificates from Tamil Nadu Medical Services Corporation Limited Chennai, purportedly issued by it bearing its seal and stamp. Realizing that those were forged one, the first informant who was serving as a Drug Inspector in that office clandestinely made an enquiry with the staff members of M/s. Shreya Life Sciences Pvt. Ltd, a company having its office at Waluj Aurangabad. It was found that those were forged certificates and were prepared on behalf of the company and submitted to Tamil Nadu Medical Services Corporation Limited as a part of the tender documents. Accordingly the F.I.R. was lodged. Investigation was carried out. It was found that the accused No. 1 who was then

Manager of the Institutional Supplies of the company was the prime accused and even the present petitioner who was the Vice-President of Quality Assurance/Quality Control/ R & D of the company was also involved with one more person in preparing the forged certificates and tendering them to obtaining the contract.

4. The learned advocate for the petitioner Mr. Deshmukh submits that the petitioner was only involved in Manufacturing, Quality Control and Research and Development of drugs and was not at all having any concern with the marketing activity. Therefore there was no occasion for him to get involved in preparation of such certificates which were annexed with the tender documents. There is absolutely no material in the charge-sheet to reveal in what form he was involved. One cannot comprehend the exact role played by him. Mere suspicion would not be sufficient.

5. The learned advocate further submits that, the prosecution has been relying upon the statements of an employee Girish Govindrao Bhatlavande and that of another employee Dr. Anil Kashiram Fokmare. However both of them have not revealed any material particulars much less in respect of any role played by the petitioner in fabricating the certificates. Thus even if the entire charge-sheet is taken at its face value, there is absolutely no material to reveal any role played by the

petitioner in commission of the crime. The charge is groundless and he should have been discharged. The learned Magistrate and even the learned Additional Sessions Judge have not appreciated the facts and circumstances and particularly the lack of material to prima facie reveal his involvement in commission of the crime and he may be discharged by allowing the Writ Petition.

6. The learned APP submits that ex facie, going by the nature of the crime, it would not have been possible for an individual or two to indulge in the alleged activity of forgery. The company wanted to submit a tender obviously to get a contract for supply of drugs. Many certificates were forged obviously to suit the purpose. Therefore it is not the accused No. 1who alone could have indulged in such an act. There must be several other persons from the company like the present petitioner who must have shared a common intention and must have even conspired to commit the crime.

7. The learned APP would further point out that since it is a matter of conspiracy hatched in secrecy, direct evidence would seldom be had. During the course of investigation it was found that witness Bhatlavande was an employee of the company who had noticed such bogus and forged certificates and had sent an email to the petitioner informing about such misdeeds and has further stated that the

petitioner thereafter telephoned him and asked him as to why he had sent the mail to him and further asked him to keep mum. His version has also been corroborated by another employee Dr. Fokmare. The copy of the mail has also been recovered and has been filed with the charge-sheet which further corroborates the version of witness Bhatlavande. This much of evidence at least prima facie indicates involvement of the petitioner in commission of the crime. At least it cannot be said that the charge is groundless, without which he cannot be discharged under section 239 of the Code of Criminal Procedure.

8. I have carefully gone through the entire charge-sheet. Considering the nature of the crime and the modus operandi, one can easily infer that in order to promote the company for securing the contract the alleged forgery was indulged into. One can easily comprehend that since no individual was to be benefited and the tender was filed for and on behalf of company, many persons from the Management and/or Officers of the company must have been involved in the process of filing the tender. It cannot be a handy work of an individual or two. Therefore though now it is the accused No. 1 who was then holding the post of Head of the Marketing Department and even one of the directors of the company are accused, there could be few more.

9 Be that as it may, so far as the petitioner is concerned, statement of Shirish Bhatlande is important and his statement clearly makes out the role attributable to the petitioner. He has specifically stated that he was serving in the company as an Officer of Quality Assurance at the material time. The petitioner was his superior and he used to report to the petitioner. He stated that the accused No. 1 used to obtain documents from him whenever some tender was to be submitted. Whenever the accused No. 1 used to contact him he used to communicate with the Drugs Department and used to take entry in the register of the Market Standing Certificates received from the Drugs Department. He has further stated that after coming across the forged certificates he had pointed out to Mr. Naidu i.e. accused No. 1 and Mr. Fokmare about it. Since Mr. Naidu told to talk to him about it later on he got disturbed. He then sent an email to the present petitioner and in turn the petitioner telephoned him, questioned him as to why the mail was sent to him and further asked him to keep mum. A copy of the mail is available in the charge-sheet and reads that on 23.11.2008 he had sent that mail mentioning that during verification of the tender documents on 20.11.2008 he had found some dummy certificates shown to have been issued by F.D.A. Aurangabad. This conduct of the petitioner in getting disturbed after receipt of the email and asking this witness to shut his mouth is certainly an

incriminating circumstance at least to draw some inference about his involvement in the alleged crime.

10. The learned advocate for the petitioner submits that mere inaction on the part of the petitioner would not be sufficient to charge him for the crime.

11. However, it is important to note that the version of this witness Mr. Bhatlavande is not an isolated version. It stands corroborated by the version of Dr. Fokmare, who has stated that Bhatlavande had informed him about absence of entry regarding the two Market Standing Certificates purportedly issued by F.D.A. which were not found to have been entered in the Inward/Outward register. He has stated that he asked Bhatlavande to contact to Mr. Naidu and thereafter Bhaglavande sent the mail to the petitioner.

12. True it is that suspicion howsoever strong cannot take place of proof. However, the stage of proof is yet to reach. This much of material does give rise to a strong suspicion regarding petitioner's involvement in commission of the crime. At least this material is sufficient to demonstrate that the charge is not groundless. As has been laid down in the case of **State by Inspector of Police, Chennai Vs. S. Selvi and another; (2018) 13 Supreme Court Cases 455** if on the

basis of material on record Court prima facie forms opinion that the accused may have committed offence it can frame charge, though for conviction, guilt of the accused is required to be proved beyond reasonable doubt. It has also been held that probative value of the material on record is not expected to be gone into at the stage of discharge. The accused can be discharged if the evidence produced before the Judge only gives rise to some suspicion but not grave suspicion against the accused. The aforementioned circumstances in my considered view certainly give rise to a grave suspicion and not merely a suspicion.

13. True it is, as is laid down in case of **Sajjan Kumar Vs. Central Bureau of Investigation; (2010) 9 Supreme Court Cases 368** that at the stage of framing of the charge or while considering application seeking discharge a Judge or a Magistrate is not expected to analyse all the materials including pros and cons, reliability or acceptability thereof. But then the material in the matter in hand discussed herein above which has surfaced during the course of investigation is sufficient enough to give rise to a strong suspicion about petitioner's involvement in the crime.

14. Both the Courts below have rightly appreciated the material and have come to a plausible conclusion about their being sufficient

ground to proceed against the petitioner and the charge cannot be said to be groundless. I find no reason to interfere.

15. The Writ Petition is dismissed. The rule is discharged.

**( MANGESH S. PATIL, J. )**

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