

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

CRIMINAL WRIT PETITION NO.1433 OF 2019

Mr. Sudhir Shankar Adsul

Age - 38 years, Occupation - service
Resident at – room no.703, Nishigandha
Building, plot no. 160, Sector -23,
Ulwe, Navi Mumbai, Dist. Raigad

... Petitioner

VERSUS

The State of Maharashtra,
(At the instance of Senior Inspector of
Gangakhed Police Station, Gangakhed)

... Respondent

...

Advocate for petitioner : Mr. Wakchaure Anita C.
APP for the Respondent / State : Mr. B.V. Virdhe

...

CORAM : MANGESH S. PATIL, J.

Date : 14.10.2019

JUDGMENT :

Heard the learned advocate for the petitioner and the learned APP for the respondent.

2. Petitioner is the accused no.2 facing the trial in connection with Crime No.174/2018 for the offences punishable under Section 406, 420, 465, 468, 471, 473 read with Section 34 of the Indian Penal Code.

3. In sum and substance the allegations are to the effect that all the accused by sharing common intention promised to secure job to the informant and other witnesses and under that pretext received money from them and to some of them bogus and forged appointment letters were issued. The petitioner submitted application (Exh.64) seeking discharge under Section 239 of the Code of Criminal Procedure. The learned Magistrate rejected the application. Being aggrieved he preferred a revision but even that has been dismissed. Hence this Writ Petition.

4. The learned advocate for the petitioner vehemently submits that without there being iota of material collected during the course of investigation against him, he has been falsely implicated. There is no reference about him in the FIR. There is no witness saying that he had received any money from them. Money trail has not been revealed. The only allegation against the petitioner is about some seals and stamps having been found in his shop but even those do not tally with the impression of the seal and the stamp on the alleged forged appointment orders. The petitioner is being implicated on the basis of a statement of a co-accused which is inadmissible in evidence. Therefore there is no sufficient ground to proceed against him. The learned Magistrate failed to considered all the aforementioned aspects and refused to discharge him. The order in spite of being perverse and

arbitrary has not been interfered with by the court on revision.

5. I have carefully gone through the papers. At the outset it is necessary to note that there is a concurrent observations of the two courts below and in the normal course it would not be appropriate for this Court to interfere in such concurrent orders, by invoking the powers under Article 227 of the Constitution of India Section 482 of the Code of Criminal Procedure, unless it can be demonstrated that the orders passed by the two courts below are perverse and arbitrary or grossly erroneous.

6. It would be appropriate to reiterated the *modus operandi* being attributed to the accused persons. The informant and several other unemployed youth were allegedly lured to part with money under the promise of securing Government employment. It is not that there is some isolated incident of cheating and forgery. It is alleged that it is over a period of time that all the accused persons acting in unison have cheated the informant and several other persons at different time and places. The petitioner is not directly involved in the sense that he either had approached any of these victims or to have received money from them. If such is the state of affairs, merely because his name does not appear in the FIR one cannot jump to the conclusion that there is no substance in the allegations against him.

7. True it is that revelations made by the co-accused showing complicity of the petitioner is inadmissible in evidence. However, it is equally important to note that during the course of investigation some rubber stamps and seals have been found from the shop owned by the petitioner. Whether and to what extent these incriminating articles would be of any help to the prosecution during the course of the trial would depend upon evidence and can be answered during the course of trial. It follows that it would not be appropriate at this juncture to undertake any examination of those seals and stamps by comparing with the seals and stamps appearing on the alleged forged appointment orders/letters.

8. Suffice for the purpose to observe that finding such seals and stamps in the shop of the petitioner and which seals and stamps purportedly read that those are of Directorate of Medical Education and Research, Mumbai itself is sufficient to say that there is some substance in the prosecution version revealing complicity of the petitioner in commission of the crime.

9. If such is the state of affairs, no fault can be found with the observations and conclusions of the two courts below in holding that *prima facie* the material is enough to frame charge against him and he

cannot be discharged. I therefore find no sufficient ground to cause interference.

10. The Writ Petition is dismissed in limine.

(MANGESH S. PATIL, J.)

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