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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 451 OF 2017**

Kailas Nivrutti Shirsath	...Petitioner
VS.	
The State of Maharashtra	...Respondent

Mr.Sachin Gite for the petitioners
Mr.S.S.Hulke,APP for State

CORAM : SURENDRA P.TAVADE, J.

DATE : JANUARY 3, 2020

P. C. :

. By this petition, the petitioner is challenging the order dated 20.8.2016 of issuance of summons to two witnesses in Criminal Case No.133 of 2009 pending against him. The petitioner had challenged the said order passed by the learned Magistrate before the Additional District Judge by way of criminal revision application No.351 of 2016 which came to be dismissed on the ground of maintainability. Hence, the present petition. The petitioner was prosecuted at the instance of the Nashik Municipal Corporation for the offence punishable under sections 420, 468, 471, 463, 464, 474 of the Indian Penal Code.

2 The petitioner was an employee of Nashik Municipal Corporation. He was serving as a Peon. He applied for the post of Junior

Clerk. He pretended that he completed his SSC examination in the year 1991. He produced mark-sheet of SSC examination. On the basis of the said qualification, he was promoted to the post of Clerk by order dated 14th October 1996. On 5th March 2008 Shri Dhananjay Badade made application alleging that the petitioner gave a false and forged mark-sheet of SSC and obtained the post of Junior Clerk. On enquiry, it was found that there was some substance in the allegations made by Shri Badade. Hence, Shri Mukund Kesopant Zite, Assistant Commissioner (Administration) lodged First Information Report against the petitioner.

3 Investigation was carried out against the petitioner and ultimately, chargesheet came to be filed before the learned Magistrate. It was revealed that Investigating Officer has not recorded the statement of Shri Badade who in fact gave information about falsehood of the mark-sheet of the petitioner. Similarly, Investigating Officer has not recorded the statements of witnesses of officials of Maharashtra State Secondary and Higher Secondary Education Board regarding alleged false mark-sheet. In fact, it appears that the mark-sheet submitted by the petitioner was referred to Maharashtra State Secondary and Higher Secondary Education Board. In reply, the Maharashtra State Secondary and Higher Secondary Education Board has intimated to the Investigating Officer that the said mark-sheet is false and in fact, it belongs to one Santosh Patil.

4 As there were no statements recorded either of Shri Badade or officials of the Maharashtra State Secondary and Higher Secondary Education Board, the prosecution applied for permission to record the

statements of the said two witnesses. The say of the petitioner was called. The application was vehemently opposed by the petitioner on the ground that the prosecution wanted to fill up the lacuna in the case but ultimately the application was allowed. The said order is under challenge.

5 Heard Shri Gite, learned counsel for the petitioner. He submits that the Investigating Officer had sufficient opportunity to record the statements of Shri Badade as well as the officials of Maharashtra State Secondary and Higher Secondary Education Board and he had not availed the same. Therefore, now the prosecution cannot fill up loophole or lacuna in the case. On the other hand, it is submitted that the role played by Shri Badade is of first informant. In fact, criminal law was set in motion on the application made by Shri Badade. Therefore, it was incumbent upon the Investigating Officer to record his statement but it is found that his statement was not recorded. It appears from the record that the mark-sheet submitted by the petitioner was sent to Maharashtra State Secondary and Higher Secondary Education Board for verification. After verification it was found by the Maharashtra State Secondary and Higher Secondary Education Board that the seat number given by the petitioner was in fact of Santosh Patil but the Investigating Officer has not recorded the statement of the officials of the Maharashtra State Secondary and Higher Secondary Education Board in this behalf. The said evidence is required to decide the matter. The first informant has just categorically mentioned in the FIR that the Secretary of the Maharashtra State Secondary and Higher Secondary Education Board has verified the details given by the petitioner regarding his SSC examination and found that it was false and bogus. Therefore, statements of officials of

Maharashtra State Secondary and Higher Secondary Education Board were required for just decision of the case. Prosecution has submitted application at Exhibit-29 in Regular Criminal Case No.133 of 2009 for calling the witnesses viz. Dhananjay Badade and the officials of Maharashtra State Secondary and Higher Secondary Education Board. The said application is made under section 311 of the Code of Criminal Procedure, 1973. Though, there is no specific mention of section 311 of the Cr.P.C. but the contents of the application are based on the provisions of section 311 which read as under :

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

6 In the present case, the prosecution realised that the Investigating Officer had not recorded the statement of a person who gave information of false mark-sheet submitted by the petitioner but his name is mentioned in the FIR by the First Informant. Therefore, Shri Badade is a crucial witness in the case, but his statement was not recorded for the reasons best known to him. The mark-sheet of the petitioner was submitted to Maharashtra State Secondary and Higher Secondary Education Board for verification which in reply intimated that

the mark-sheet submitted by the petitioner shows that it belongs to one Santosh Patil and not of the petitioner but the statements of the officials of the Maharashtra State Secondary and Higher Secondary Education Board were not recorded by the Investigating Officer. Therefore, the evidence of the officials of the Maharashtra State Secondary and Higher Secondary Education Board is also of crucial in nature. There is reference in the FIR that the mark-sheet of the petitioner was referred to Maharashtra State Secondary and Higher Secondary Education Board and it was verified by the Secretary of the Maharashtra State Secondary and Higher Secondary Education Board. Therefore, it cannot be said that the witness was not referred in the chargesheet. The prosecution has rightly applied for examination of the witnesses whose statements are not recorded by the Investigating Officer. The decision of the Trial Court is just, legal and valid. There is no need to interfere with the said order. Hence, I find that the petition has no merit and deserves to be dismissed.

7 Hence, I pass the following order:

ORDER

. Writ Petition is dismissed.

[SURENDRA P.TAVADE, J.]