

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Writ Petition No. 2789 / 2021

Dattatraya Sakharam Survase .. **Petitioner**

Versus.

The State of Maharashtra and Anr. .. **Respondents**

Mr. Ganesh Bhujbal i/by Suhas S. Inamdar, Advocate
for the Petitioner.

Senior Advocate Rajiv Patil i/by Mr. Anand S.
Kulkarni, Advocate for Respondent No.2.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE J.

DATE : 16th NOVEMBER, 2021.

P.C. : -

Heard.

1. This petition under Article 227 of the
Constitution of India assails the order dated 3rd
December, 2020, by which learned Additional Sessions
Judge, Solapur declined to pass discharge order

under Section 227 of the Code of Criminal Procedure, 1973, in favour of the Petitioner.

2. Background facts are that Petitioner was Chairman of Complainant, Ashwini Sahakari Rugnalaya & Research Centre from 1985 to 2000. During the said period, construction of Hospital Building was going on. At the material time, Accused was partner in a firm, M/s Ganesh Builders; M/s Maharashtra Small Industries Society, Hotel Surya and Venkateshwar Engineering. Petitioner as a Chairman of the said society had purchased construction material from the above four firms. However, the material so purchased, was not used in construction of Hospital Building. Yet, Petitioner-Accused had shown amount of Rs. 6,22,000/-, due and payable to M/s Ganesh Builders; Rs. 1,19,000/- due and payable to M/s Maharashtra Small Scale Industries; Rs. 82,000/- due and payable to Venkateshar Engineers and accordingly paid 8,20,000/- to these firms. It

appears, Petitioner did not render the accounts of the society for the period of 1986 to 1990. Besides, he manipulated the accounts of the society. Thus, it is a case of Complainant - Society that Petitioner during his tenure as a Chairman, as dishonestly misappropriated the property, which was entrusted to him. Consequently, enquiry under Section 83 of the Maharashtra Co-operative Society Act, 1960 ('MCS Act' for short), was initiated. After which, Complainant-Society appointed a Committee consisting of Chartered Accountant, Architect, Administrative Officer to enquire into the allegations. This Committee submitted a report to the Managing Committee of the Complainant - Society. After perusing the report, a complaint was filed against the Petitioner, being R.C.C. No. 330/2005 for the offences punishable under Sections 406, 409, 418, 471 of the Indian Penal Code, 1860.

3. Complainant led evidence of two witnesses before framing the charge. These witnesses were cross-examined by the Petitioner. Thus upon assessing and appreciating the evidence before the charge, the learned Chief Judicial Magistrate found the evidence was believable and trustworthy. In Paragraph No. 5 of the impugned order, learned Magistrate has observed as under;

"5. It is clear from the evidence led by the complainant that, nothing came on record in cross-examination of witness nos. 1 and 2 for the complainant to disbelieve their evidence. Their oral evidence is corroborated by the documentary evidence produced on record and the enquiry report. Learned Advocate for the accused submitted that, the audit report during said period is not produced on record and it is not proved. However, the evidence led by the complainant before framing of charge remained unchallenged and it is believable and trustworthy. Therefore, on the basis of evidence led by the complainant, it is held that, there are sufficient grounds for presuming that, the accused had committed offences punishable u/s. 406, 409, 418, 468 and 471 of Indian Penal Code. Therefore, the charge is required to be framed against accused for said offences. Hence, I pass following order:-

ORDER

The charge be framed against accused for offences punishable u/s. 406, 409, 418, 468 and 471 of Indian Penal Code."

. Whereafter, he proceeded to frame the charge for the offences punishable under Sections 406, 409, 418, 471 of IPC. This order was confirmed in the revision by the learned Sessions Judge, Solapur.

4. These two orders are assailed in this petition filed under Article 227 of the Constitution of India.

5. Mr. Bhujbal, learned Counsel for the Petitioner would submit that although, the enquiry was held under Section 83 of the MCS Act, but it did not culminate into order under Section 88. Thus, contended that unless, enquiry under Section 83 of the MCS Act, is concluded and translated into order under Section 88 of MCS Act, complainant-Society could not have appointed independent Committee to

enquire into the allegations and launch the Prosecution against the Petitioner. In my view, this submission cannot be accepted for the simple reason that under Section 88 of MCS Act, Registrars' powers are confined to assess the damages caused to the Society, which are distinct and independent and by the fact itself, Society cannot be precluded from launching Prosecution. In this case, before framing the charge, Society led the evidence of two witnesses. They were cross-examined and after assessing the oral and documentary evidence, the learned Court, upon reaching the satisfaction that evidence was trustworthy, declined to discharge the Petitioner. In my view, the Courts below have not committed an error in exercise of its jurisdiction and therefore no interference is called for in the supervisory jurisdiction of this Court. As such challenge fails. Petition is dismissed.

6. At this stage, Mr. Bhujbal, learned Counsel for

the Petitioner seeks continuation of the interim relief for the period of four weeks to enable the Petitioner to challenge this order before the Hon'ble Apex Court. That since pending petition, Petitioner was protected by granting interim relief, the same is continued for the period of eight weeks from today.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
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QAYYUM

Digitally signed
by MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date: 2021.11.26
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