

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.94 OF 2022

- 1) Govind Murlidhar Mahajan,
Age-65 years, Occu:Service (Retired),
R/o-Sharda Nagar, Gopal Police Chowky,
Bhusawal, Tq-Bhusawal, Dist-Jalgaon,
- 2) Smt. Chaya Baliram Chaudhari,
Age-59 years, Occu:Service (Retired),
R/o-Ganesh Colony, Plot No.60,
Jalgaon Road, Bhusawal,
Tq-Bhusawal, Dist-Jalgaon.

...PETITIONERS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Harshal P. Randhir Advocate for Petitioners.
Mr.S.P. Deshmukh, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 21st JUNE, 2022

ORDER :

1. Present Writ Petition, by invoking the constitutional powers of this Court under Article 227 of the Constitution of India as well as inherent jurisdiction under Section 482 of the Code of Criminal Procedure, challenges the order passed below

Exhibit-23 by learned Judicial Magistrate First Class, Bhusawal in R.C.C. No.186 of 2015 dated 20th April 2019 thereby rejecting the application filed by the petitioners under Section 239 of the Code of Criminal Procedure and then the Judgment and order passed by the learned Additional Sessions Judge, Bhusawal in Criminal Revision Application No.44 of 2019 under Section 397 of the Code of Criminal Procedure, dated 13th January 2020 confirming the said order passed by learned Judicial Magistrate First Class, Bhusawal.

2. The petitioners are the original accused Nos.1 and 2 who are facing R.C.C. No.186 of 2015 for the offence punishable under Sections 420, 408 read with Section 34 of the Indian Penal Code.

3. The First Information Report (for short "FIR") has been lodged by one Prabhakar Namdeo Thakare, In-charge Education Officer of Panchayat Samitee, Bhusawal, stating that he had gone for inspection for checking the stock with the school which was provided for mid-day meal scheme for the students. He had gone there about 3.30 p.m. on 10th February 2014. While checking the said stock with T.S. Zope Primary School, Bhusawal in presence of petitioner No.2, who was the headmistress of the

said school, at that time it was found that the stock which was given for the students of 1st to 4th standard in respect of rice, was as per the register. At the same time, they found that the stock in respect of K. Narkhede School, Bhusawal, was kept in the premises of Zope Primary School. Petitioner No.1, who was the Headmaster at the relevant time, was called and it was found that 3 Quintals 44 Kilograms and 350 Grams rice was less than the stock register and therefore, the informant has lodged the FIR on 27th February 2015. By way of supplementary statement, he has stated that in fact he has gone for checking the stock on 10th February 2015 and inadvertently date of inspection, in his FIR, has been wrongly stated as 10th February 2014.

4. The panchnama of the spot has been drawn and thereafter, it appears that the premises of Bachat Gat, to whom contract of preparation of the mid day meal was given, were searched and at that time 3 Quintals 44 Kilograms and 350 Grams rice in ten plastic bags worth Rs.7,920=05 was seized on 27th February 2015. Statements of witnesses have been recorded and charge-sheet came to be filed.

5. It is to be noted that at Exhibit-23 the present petitioners, accused Nos.1 and 2, filed application for discharge under

Section 239 of the Code of Criminal Procedure and say of the learned APP was also called. Learned Special APP, Bhusawal has given his say on 11th August 2016 and after hearing both the sides, the learned Magistrate rejected the said application and the said order passed by him was then challenged before the learned Additional Sessions Judge, Bhusawal, District-Jalgaon in Criminal Revision Application No.44 of 2019, which came to be dismissed on 13th January 2020. Hence this Writ Petition.

6. Heard Mr. Randhir, learned Advocate for the petitioners and Mr. Deshmukh, learned APP for the respondent-State.

7. It has been vehemently submitted on behalf of the petitioners that both the Courts below had not considered the evidence in the form of statements of the witnesses and the Government Resolution dated 26th February 2014, which was part of the charge-sheet. Further, in his say the learned Special APP had in fact not objected the application filed by the present petitioners and it was stated in the say that when it was the responsibility of the Bachat Gat to give good food after its preparation, the said stock was taken by the concerned person from Bachat Gat for cleaning purposes. The work of preparation of mid-day meal of the said school was given to Matoshri

Bahuuddeshiya Bachat Gat. The concerned person, namely, Rahul Devidas Chaudhari was called at the time when the informant visited the school and now he is accused No.3. Statement of one Aatish Jagannath Athawale, who is rickshaw driver, taken by the investigating officer on 20th March 2015, would show that his rickshaw was usually engaged by Rahul Chaudhari for taking the rice from the school to the office of the Bachat Gat for cleaning purposes and thereafter it used to be brought back to the school in his auto rickshaw. He had transported the said rice on 10th February 2015 at about 1.30 p.m. to 2.30 p.m. on the say of said Rahul Chaudhari from Zope Primary School to the office of the Bachat Gat. This statement was considered by the Special APP, Bhusawal and the learned APP had also taken objection, as to why news reporters, photographers were taken by the informant along with him at the time of inspection. In spite of such say by the prosecution, the learned Magistrate has rejected the application and the revisional Court has also not considered the same. In fact, there was no evidence to connect the petitioners with the crime and therefore, the application ought to have been allowed.

8. Learned Advocate for the petitioners relied on the decision in the case of ***Vikram Johar vs. State of Uttar Pradesh and***

another, (2019) 14 SCC 207, wherein various decisions of the Hon'ble Apex Court were considered, especially, the decision in **Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4** was considered and the principles which were emerging while considering the application for discharge (though it was under Section 227 of the Code of Criminal Procedure) have been laid down. Thereafter in Three-Judge Bench decision in **State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568**, it was held that Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements.

9. Learned Advocate for the petitioners has further placed reliance on the decision in the case of **Maruti Navnath Sonawane vs. State of Maharashtra, 2022 SCC OnLine Bom. 955**, wherein the Division Bench of this Court also relying on **Union of India vs. Prafulla Kumar Samal**, (supra), held that the entire evidence before the Court will have to be considered while considering the application for discharge.

10. Learned APP supported the reasons given by the learned Judicial Magistrate First Class as well as revisional Court and submitted that there is material against both the accused persons. Being the headmasters of the different schools, they were responsible to keep the stock up to date of the rice in respect of the mid-day meals and it was found that the stock was less to the extent of 3 Quintals 44 Kilograms and 350 Grams and it was found with the office of the Bachat Gat, which was not permissible.

11. As the facts of the case are already narrated, those are not required to be reproduced once again. There cannot be any different view as regards the position of law that while dealing with an application under Section 239 or 227 of the Code of Criminal Procedure, the Court has to consider the entire material that has been placed on record either by way of charge-sheet or anything that has come even under Section 173(8) of the Code of Criminal Procedure. The ratio laid down by the Hon'ble Apex Court is definitely binding, so also the interpretation of the law that has been made by the Division Bench, however, it is to be noted that the said stage will come i.e. application of law, when the facts and the material before this Court is scrutinized. As per the FIR, when the informant had gone to check the stock and

had in fact checked the stock in respect of T.S. Zope Primary School, for which headmistress Chaya Chaudhari i.e. petitioner No.2 was responsible, and it was found correct as per the stock register. But, then the deficiency was found in respect of the stock which was meant for K. Narkhede Vidyalaya, Bhusawal. It has come on record that both the schools are run by the same institute and due to some constraint in respect of building and space, the said stock of K. Narkhede Vidyalaya appears to have been kept in the premises of T.S. Zope Primary School. But, then it can be seen from the FIR that the said stock was kept in such a position that it was segregated in respect of both the schools. Further, the statements of other witnesses, especially Kamlesh Chaudhari, who was the photographer and was accompanying the informant and also one Vijay Wagh, who was news reporter and accompanying with the informant, show that the stock in respect of T.S. Zope Primary School was as per the register and nothing contradictory thing was found in respect of that. Under such circumstance, the discharge application filed by petitioner No.2 – Chaya Chaudhari ought to have been allowed by the learned Magistrate. This scrutiny does not amount to minute scrutiny but it is on the face of record itself.

12. Now, turning towards the stock in respect of K. Narkhede Vidyalaya, for which petitioner No.1 was responsible, it appears that the said stock was short of 3 Quintals 44 Kilograms and 350 Grams rice and this has been stated by almost all the witnesses. Petitioner No.1 is now harping upon three facts, i.e. the contents of the Government Resolution, statement of Aatish Athawale and say of the learned APP conducting the matter before the learned Judicial Magistrate First Class, Bhusawal. The copy of the Government Resolution puts responsibility on the Bachat Gat for the preparation of the meal. In fact the Bachat Gat is supposed to be selected by the institution itself and then the Bachat Gat would be responsible for putting up the demand for the grains and by checking the grains it should be taken in possession and entries in respect of the same are to be taken in the appropriate register. Headmaster had the responsibility to certify the demand and other things. Thereafter, the said Government Resolution puts responsibility on the Headmaster to check the stock and the other documents i.e. accounts twice in a month and to send report in confidential way to the Education Officer. Headmaster has also responsibility to keep the register in respect of how many children had taken the meals, what was the menu etc. He has to recommend action to be taken against the

Bachat Gat or the cook in respect of difference in the stock, substandard quality of the food grains or even food poisoning. Responsibility has been put on the Bachat Gat to prepare the food, to maintain the cleaning of the utensils, cleaning of the area where the preparation of food has been done etc. and also when it is said that the standard of the grains will have to be maintained, then it is the job of the Bachat Gat to clean the food grains. However, the said Government Resolution does not allow food grains to be taken from the school premises to any other premises including the office of the Bachat Gat. Everything is expected to be done within the premises of the school. Under such circumstance, we cannot give importance to the statement of Aatish Athawale. Accused No.3 might have asked him to take the said grains to the office of the Bachat Gat, then whether petitioner No.1 could have allowed Rahul Chaudhari to do that, is a question. Thirdly, as regards the say of the Special APP is concerned, it appears that he has not properly considered the Government Resolution and he was justifying the act of the Bachat Gat i.e. the defence that has been raised by the Bachat Gat to take the food grains to its office for the purpose of cleaning. It ought to have been seen by the learned APP, Bhusawal that the cleaning work can be done by the Bachat Gat

by employing necessary employees on a holiday i.e. holiday for the school, that too, within the premises of the school itself. It is absolutely not necessary that it should be taken for some purposes to its office. Under such circumstance, there appears to be prima facie case for proceeding against petitioner No.1.

13. Even after taking into consideration the ratio laid down in the decisions which have been relied upon by the learned Advocate for the petitioner, the said ratio cannot be applied for the defence that has been put up by petitioner No.1. However, as regards petitioner No.2 is concerned, the case of the prosecution itself is that there was no discrepancy in the entries in the register in respect of the grain which was meant for T.S. Zope Primary School.

14. For the above said reasons, the Writ Petition deserves to be partly allowed. Hence the following order is passed:-

ORDER

(I) Writ Petition stands partly allowed.

(II) The order passed by learned Judicial Magistrate First Class, Bhusawal below Exhibit-23 in R.C.C. No.186 of 2015 dated 20th

April 2019 stands set aside to the extent of rejecting the application filed by petitioner No.2.

(III) The order passed by learned Additional Sessions Judge, Bhusawal in Criminal Revision No.44 of 2019 dated 13th January 2020 stands set aside to the extent of rejecting revision filed by petitioner No.2.

(IV) Application Exhibit-23 filed in R.C.C. No.186 of 2015 stands allowed to the extent of petitioner No. 2 – Smt. Chaya Baliram Chaudhari.

(V) Petitioner No.2 – Smt. Chaya Baliram Chaudhari stands discharged from R.C.C. No.186 of 2015.

(VI) It is clarified that the order passed by the learned Judicial Magistrate First Class, Bhusawal below Exhibit-23 in R.C.C. No.186 of 2015 dated 20th April 2019 and the order passed by learned Additional Sessions Judge, Bhusawal in Criminal Revision No.44 of 2019 dated 13th January 2020, stands confirmed as against petitioner No.1 – Govind Murlidhar Mahajan.

(VII) Taking into consideration the fact that the charge-sheet was filed in 2015 and it appears that the case is still at a

preliminary stage, it deserves to be expedited. The learned Judicial Magistrate First Class, Bhusawal is directed to expedite R.C.C. No.186 of 2015 and dispose it of on its merits by the end of this year.

[SMT. VIBHA KANKANWADI , J.]

asb/JUNE22