

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

CRIMINAL WRIT PETITION NO.731 OF 2018

Govind s/o Chandrakant Kotalwar ... **PETITIONER**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Mr. R.N. Chavan, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for the respondent – State
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CORAM : R. G. AVACHAT, J.

DATED : 15th March 2022

ORDER :

Heard learned counsel for the parties. The challenge in this petition is to the order dated 10/8/2017, passed by Judicial Magistrate, First Class, 4th Court, Udgir, rejecting the petitioner's application for discharge from Regular Criminal Case (R.C.C.) No.140/2015, and the judgment and order dated 26/2/2018, passed by Additional Sessions Judge, Udgir in Criminal Revision No.25/2017, confirming the said order.

2. The petitioner is sought to be prosecuted for the offences punishable under Sections 408, 409, 420 read with Section 34 of the Indian Penal Code. The First Information Report (F.I.R.) has been lodged by one Ramakant Kendre against the petitioner and two others on 23/8/2014. It has been averred in the F.I.R. that the informant and his brother Shankar run cattle feed shop at Muttalgaon, Taluka Udgir, District Latur. A Nanded based Narayan Trading Company is a wholesaler in cattle feed. One Balaji Gundu Mahajan (co-accused) would work as an agent. On deposit of money in advance either with Narayan Trading Company or paying the same in cash to Balaji Mahajan, Narayan Trading Company used to supply the informant cattle feed.

3. On 24/4/2014, Balaji Mahajan asked the informant to deposit a sum of Rs.2,00,000/- in the Bank Account of Narayan Trading Company, if they required the cattle feed. He promised to send cattle feed on 10/3/2014. He asked the informant to pay the balance amount to him in cash at Udgir. The informant, therefore, deposited a sum of Rs.2,00,000/- in the Bank Account of Narayan Trading Company on 24/2/2014 and 26/2/2014. In spite of having

deposited the amount, the informant did not receive the cattle feed. The informant, therefore, contacted Balaji, who in turn, assured to send the cattle feed within two days. The informant, however, did not receive cattle feed. Balaji started avoiding to send the cattle feed. The informant, therefore, went to village Loha to find Balaji to have been out of station. The informant and his brother, therefore, approached Kailas Joshi (co-accused), proprietor of Narayan Trading Company. Kailas Joshi refused to send the cattle feed and said the informant to have had no dealing with him.

4. Then there is statement of one Dattatraya Kotgire, stating therein that Balaji Mahajan was a Munim (Accountant) of the petitioner herein. Both the petitioner and Balaji had conspired to dupe/ cheat the others in the same business. The transaction in question was result of such conspiracy between the two. On the same line are statements of Kishor Madrewar, Bhanudas Komple, Basawraj Chillarge and few others. There is also statement of Kailas Joshi (co-accused), proprietor of Narayan Trading Company. He admitted to have received a sum of Rs.2,00,000/- in his Bank Account from the informant. Co-accused Balaji had asked him to get the said

amount deposited in the name of the petitioner – commission agent.

5. The learned counsel for the petitioner would submit that, there is no material to indicate the petitioner to have in fact been involved in the alleged crime. He, therefore, urged for setting aside the orders impugned herein and discharge the petitioner from the criminal case.

6. The learned A.P.P. would, on the other hand, submit that, co-accused Balaji was acting as an agent for the petitioner herein. The same indicates the petitioner to have been hand in gloves with the co-accused. According to learned A.P.P., whatever defence the petitioner has, would be a matter of evidence to be appreciated by the trial Court during trial of the case. The learned A.P.P. ultimately supports the impugned orders.

7. Chapter XIX of the Code of Criminal Procedure speaks of trial of warrant cases by Magistrate. Section 239 thereof reads thus :

"239. When accused shall be discharged :- If, upon considering the police report and the documents sent with it under Section 173 and making such

examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

8. The F.I.R. noway names the petitioner herein as an accused. Statement of co-accused Kailas Joshi is inadmissible in evidence. Admittedly, it was the co-accused Balaji Mahajan, at whose instance the informant had deposited a sum of Rs.2,00,000/- in the Bank Account of Narayan Trading Company for purchase of cattle feed. All such transactions between them had earlier taken place through Balaji Mahajan. True, Balaji Mahajan was said to be a Munim (Accountant) of the petitioner. There is, however, nothing to suggest that the transaction in question had in fact taken place at the instance of the petitioner herein. The statements of the witnesses that the said transaction was a fall out of conspiracy between petitioner and co-accused Balaji has no base except the reiteration of the same.

9. As such, there is no material to frame the charge against the petitioner herein. The charge against the petitioner is groundless. The courts below ought to have

appreciated the police papers in the light of Section 239 of the Code of Criminal Procedure and relevant provisions of the Evidence Act. Be that as it may. Since the charge against the petitioner is found to be groundless, the petition deserves to be allowed and the same is allowed in terms of prayer clause (B).

**(R. G. AVACHAT)
JUDGE**

fmp/-