

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 279 OF 2021
Anant Ramrao Nirmal...Versus... State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. P.S.Wathore, Advocate for the applicant
Mr. A.R.Chutke, APP for Respondent No.1/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 24/03/2022

1] Heard Mr. Wathore, learned counsel for the applicant and Mr. Chutke, learned APP for respondent/State.

2] The application challenges the order dated 27.8.2019 in RCC No. 34/2019 (pg 279), whereby charge has been framed against the accused Nos. 1, 2 and 4, the applicant being accused no. 2. The order framing charge was challenged by the applicant before the learned revisional Court, who by judgment dated 27.1.2021 has dismissed the revision, holding that the charge framed by the learned Magistrate was proper and correct (page 320).

3] Mr. Wathore, learned counsel for the applicant/original accused no. 2 submits that there is no

material on record, to indicate the involvement of the applicant, who was posted at Amravati as an Accounts Officer in the Zilla Parishad Water Supply Department. The applicant was wrongly given the charge of an Establishment Clerk of the Water Works Department at Anjangaon Surji on 9.7.2017. It is submitted that the work of Sevarth Pranali system was made applicable in the said Department from August 2015. The work of Sevarth Pranali includes preparation of the online salary bills of the employees at Anjangaon Surji, which is termed as MTR-44. It is further contended that the applicant did not prepare a single bill, because he was never handed over the charge of the said Department, nor the user-id and password were given to him, neither had he undergone any training for the said purpose. He submits that there was an enquiry in respect of defalcation of the salary bill amount, in which enquiry report dated 30.10.2018 (page 57), the applicant is not implicated. He therefore submits that considering that the applicant was incharge of the Finance Department Zilla Parishad, Amravati, from 9.7.2017 till 31.8.2018, he had no role to play in the aforesaid crime, neither there was any material to frame any charge against the applicant and therefore, the framing of the charge as well as the dismissal of the revision is incorrect and is liable to be quashed and set aside. Reliance is placed upon

Century Spinning and Manufacturing Co. Ltd. vrs State of Maharashtra, 2015 ALL SCR (O.C.C) 137 (para 16), Dipakbhai Jagdishchandra Patel vrs. State of Gujrat, 2019 ALL SCR (Cri) 1425 (para 50), State of M.P vrs. Mohanlal Soni, (2000) 6 SCC 338 (para 9 and 13), Ajay Singh Vrs. State of Chhattisgarh, (2017) 3 SCC 330 (para 29), State of U.P vrs. Dr. Sanjay Singh, 1994 Supp (2) SCC 707 (para 23) and Criminal Application (APL) No. 594 of 2012 (Uttam Khobragade vr. Omprakash Damodar Rawat), decided on 20.2.2015 and Criminal Revision Application No. 21/2014 (State of Maharashtra vrs. Dr. Anil Madhukar Rode), decided on 9.4.2019.

4] Mr. Chutke, learned APP vehemently opposes the submissions and submits that initially one Mr. Anis Ahmad was the person incharge of the Department prior to the applicant till 8.7.2017, and while handing over the charge, the said Anis Ahmad had also handed over the user-id and password of the Sevarth Pranali System to the applicant. He therefore submits that the applicant cannot claim non-involvement in the said offence, as it is an admitted position that from 9.7.2017 till 31.8.2018, the applicant was incharge of the said Department. He further submits that though the handing over report (page 71), dated 9.7.2017 does not indicate handing over of the user-id and password as well as MTR-44,

however, the user-id and the password being required to be kept secret, no record is maintained regarding its handing over. He further relies upon the statements of Pritam Kailash Chavan (page 75), Deepak Moreshwar Dongre (page 76), Pravin Govindrao Munde (page 77), Vijendra Sureshchandra Diwan (page 78), Eknath Purnaji Bawner (page 82), Jitendra Manohar Gajbe (page 83) Rajendra Digamber Sawalkar (page 84), to contend that the user-id as well as the password of the Sevarth Pranali System and so also MTR-44 were handed over to the applicant. It is therefore contended that the applicant instead of performing the work himself, had delegated the same to one Chandan Patil, who had by using the user-id and password, diverted the funds meant for the salary bills of the employees, into his own account. It is therefore submitted that the applicant is equally responsible for the aforesaid offence, as without the connivance of the applicant, the same would not have been possible.

5] It is not in dispute that the applicant was appointed as an Accounts Officer in the Water Supply Department of Zilla Parishad, Amravati. Though it is contended that the applicant was wrongly given the charge of an Establishment Clerk of the Water Works Department at Anjangaon Surji on 9.7.2017, the fact

remains that rightly or wrongly, the applicant was incharge of the said department. The work of preparing the salary bills of the employees (MTR-44) was a part and parcel of the said establishment and therefore, when the applicant was given charge of the Establishment Department at Anjangaon Surji, it was logical that the said charge also came to the applicant. The applicant has worked in the said post from 9.7.2017 to 31.8.2018, which is also undisputed. One Smt. Jirapure, the accused No. 4 is the person who had received the charge from the applicant on 1.9.2018. Though the charge handing over list at page 71 dated 9.7.2017 does not indicate the handing over of the user-id and password of the Sevarth Pranali to the applicant, however, considering the statement of Anis Ahmad (page 61) as well as the statement of Smt. Jirapure, the successor of the applicant, the position is indicated otherwise. Similarly the plea that the applicant was not handed over MTR-44, prima facie does not appeal to reason, in view of the fact that this is indicated from the statement of Pravin Govindrao Monde (page 77), Vijendra Sureschandra Diwan (page 78) and Vinod Jairamji Raibole (page 79). That apart, the statements of Pritam Kailsh Chavan (page 75), Deepak Moreshwar Dognre (page 76), Murlidhar Somewshar Wankhede (page 80), Sandeep Bhimrao Bilbile (page 81), Eknath Purnaji Bawner (page 82),

Jitendra Manohar Gajbe (page 83), Rajendra Digamber Sawalkar (page 84), all indicate that the applicant as well as the accused No. 4 Smt. Jirapure had got the salary bills prepared online through the accused No. 3 Chandan Patil, who has indulged into the transferring of the amount of the salary bills into his account. This obviously could not have happened without Chandan Patil having had access to the user-id and password. The contention therefore that there is no material on record to indicate any complicity of the applicant in the aforesaid crime in view of what has been discussed above, prima facie does not appear to be correct. What the applicant alleges is merely that i.e. an allegation that he was not involved. Considering the statements of the various persons above, all that according to me, would lie in the realm of trial, where all these allegations shall have to be tested on the basis of evidence.

6] In so far as the judgments on which the reliance has been placed by the learned counsel for the applicant, there cannot be any quarrel with the propositions laid down therein, however, each case has to be decided on the basis of the facts available on record and in light of what has been discussed above, considering the allegations regarding non-handing of the user-id and password as well as that in regard to the

MTR-44, I do not see any reason to interfere in the impugned orders. The petition is therefore without any merits and the same is dismissed. No costs.

7] The learned Trial Court shall endeavor to decide the matter as early as possible.

JUDGE

Rvjalit