

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

CRIMINAL APPLICATION (APL) NO.731 OF 2020

APPLICANT

: 1. Ramesh Manohar Madawi, Age: 43
yrs, Occupation: Government Service,
R/o. Best Officer Quarters, Ghatkopar
East, Mumbai.

//VERSUS//

NON-APPLICANTS

: 1. The State of Maharashtra, through
PSO of Police Station Arvi, District:
Wardha.

2. Purshottam Dhotre, Age : 60 years,
Occupation: Retired, R/o. C/o.
MSRTC, Buldhana.

Mr. P.W. Mirza, Advocate for the Applicant.
Mr. S.S. Doifode, Addl. P.P. for Non-applicant No.1/State.
Mr. V.H. Kedar, Advocate for Non-applicant No.2.

CORAM

: MANISH PITALE AND
VALMIKI SA MENEZES, JJ.

RESERVED ON

: 23rd AUGUST, 2022.

PRONOUNCED ON

: 29th SEPTEMBER, 2022.

JUDGMENT (Per: Manish Pitale, J.)

Heard finally with the consent of the learned counsel appearing for the rival parties. **Admit.**

02] The applicant herein has approached this Court invoking inherent power under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), for quashing of First Information Report (F.I.R.) and charge-sheet for offences under Sections 409, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “I.P.C.”). By way of amendment, a further prayer is made for quashing and setting aside order dated 21.08.2020, passed by the Judicial Magistrate, First Class, Arvi, whereby an application for discharge filed on behalf of the applicant, was dismissed.

03] On 26.10.2021, this Court had passed an order permitting amendment of the application for adding the aforesaid prayer, despite objection raised on behalf of the non-applicant No.1/State, by referring to the judgments of the Hon’ble Supreme Court. When this application was finally heard, the said objection

was reiterated on behalf of the non-applicant No.1/State, as well as the non-applicant No.2 i.e. informant - complainant.

04] The sequence of events, leading to filing of the F.I.R. and initiation of criminal proceedings is that, the applicant at the relevant date was working as the Depot Manager of the Maharashtra State Road Transport Corporation (hereinafter referred to as "the Corporation"). On 07.03.2013, overwriting was allegedly noticed in a register maintained for diesel filled in the buses of the Corporation, as well as receipts issued by a private petrol pump from which the diesel was filled, as per an agreement between the Corporation and the Petrol Pump. It was alleged that when the Accountant of the Corporation noticed such overwriting and found that an inflated bill was sought to be prepared to the extent of 118 liters of diesel, he reported the same to the applicant i.e. the Depot Manager. Even as per the allegations, the applicant stopped the processing of the bills and payment towards diesel that was filled on the said date, in order to enquire into the matter.

05] One Mr. Dhotre, the Security and Vigilance Officer of the Corporation, was asked to enquire into the matter. He recorded statements of concerned persons, including co-accused Mr. Belge, working as Assistant and concluded that the overwriting and attempt at raising inflated bills to the extent of 118 liters of diesel, was carried out on the directions of the applicant i.e. the Depot Manager and that for excessive diesel amounting to Rs.6,353/-, the applicant had received cash amount of Rs.5,000/- from the employee of the concerned petrol pump, who was also arrayed as an accused. It appears that in pursuance of the findings given by the Security and Vigilance Officer, a censure was issued to the applicant and the matter was directed to be further enquired into.

06] On 02.12.2013 i.e. about 9 months after the alleged incident, the Security and Vigilance Officer submitted report to the Police Station at Arvi, making the aforesaid allegations against the applicant, in pursuance of which F.I.R. No.238 of 2013 dated 03.12.2013, was registered against the applicant and the aforesaid co-accused persons for offences under Sections 409, 468 and 471

read with Section 34 of the I.P.C.

07] On the basis of the aforesaid material, during the course of departmental enquiry, charge-sheet dated 18.12.2013, was also issued to the applicant for the charges of conspiring with other persons to cause financial loss to the Corporation, indiscipline, negligence which caused serious loss to the Corporation as well as inconvenience to the public at large and misappropriation and cheating as regards the property of the Corporation.

08] In pursuance of issuance of charge-sheet, enquiry was conducted and statements of all persons concerned with the incident dated 07.03.2013, were recorded and enquiry report was prepared and forwarded to the applicant by letter dated 14.08.2014. In the report, the Enquiry Officer found that when the aforesaid incident occurred, not only was the Security and Vigilance Officer directed to enquire into the matter, but the Chief Storage Officer had also recorded statements of the concerned employees. It was found that two employees i.e. one Mr. Wahane and other Mr. Talekar, who were questioned, had stated one version to the Security and Vigilance Officer and

another to the other Officer. During the course of enquiry by the Enquiry Officer, when the said employees were confronted with the conflicting statements, they were unable to give a proper explanation. It was also found that the co-accused Mr. Belge had stated before the Security and Vigilance Officer that the overwriting and tampering with the register and the receipts, was undertaken on the direction of the applicant, but before the Enquiry Officer, the said co-accused stated that the aforesaid statements were made due to the pressure exerted by the Security and Vigilance Officer.

09] The Enquiry Officer in the said report eventually found that the said employees Mr. Wahane and Mr. Talekar had prepared the fabricated bills and entries in the register by overwriting, due to which penalty of withholding of increments was imposed on them. Insofar as the applicant was concerned, it was found that the material on record demonstrated that the applicant could not be found guilty and that the allegation that he had received Rs.5,000/- cash from the co-accused i.e. the employee of the petrol pump, was also not believable on the basis

of material on record. On this basis, it was found that since the applicant had already been censured, no further action was necessary in pursuance of the charge-sheet dated 18.12.2013 and accordingly, the matter was filed.

10] In the meantime, investigation in pursuance of the F.I.R. was completed and charge-sheet dated 06.02.2014, came to be filed. The applicant had initially approached this Court by filing an application under Section 482 of the Cr.P.C. for quashing of the F.I.R., but in pursuance of filing of the charge-sheet, he withdrew the same and filed an application for discharge before the Magistrate. By impugned order dated 21.08.2020, the application for discharge was dismissed. The applicant has not only sought quashing of the F.I.R. and the charge-sheet in the present application, but by way of amendment, he is also seeking quashing and setting aside of the order of the Magistrate.

11] Mr. P.W. Mirza, learned counsel appearing for the applicant, at the outset, submitted that an objection raised on behalf of the non-applicants that the present application ought not to be entertained, because the applicant had already chosen to

apply for discharge and the order of the Magistrate could be challenged in revisional jurisdiction, is not sustainable. It was claimed on behalf of the non-applicants that since the applicant had chosen the aforesaid channel of relief, the present application under Section 482 of the Cr.P.C. ought not to be entertained. In this regard, the learned counsel appearing for the applicant relied upon judgment of the Hon'ble Supreme Court in the case of *Prabhu Chawla Vs. State of Rajasthan and another reported in AIR 2016 SC 4245*, wherein it was laid down that merely because revisional jurisdiction could be invoked, the inherent power of this Court under Section 482 of the Cr.P.C. could not be said to be unavailable.

12] The learned counsel for the applicant further submitted that when the applicant stood exonerated in the departmental enquiry on virtually the same allegations that were the basis of the F.I.R. and the charge-sheet, the criminal proceedings ought to be terminated at this stage itself, for the reason that the standard of proof in criminal cases is much higher. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of *Ashoo*

Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and another reported in (2020) 9 SCC 636, as well as judgment of this Court in the case of *Sanjay s/o. Laxman Kholapurkar Vs. State of Maharashtra reported in 2021 ALL MR (Cri) 3808*.

13] It was further submitted on behalf of the applicant that none of the ingredients of the offences alleged against the applicant were even *prima facie* made out by the material on record and therefore, the F.I.R. as well as the charge-sheet deserved to be quashed and set aside. In this regard, reliance was placed on judgments of the Hon'ble Supreme Court in the cases of *Sheila Sebastian Vs. R. Jawaharraj and another Etc. reported in AIR 2018 SC 2434* and *Mohammed Ibrahim and others Vs. State of Bihar and another reported in (2009) 8 SCC 751*.

14] It was further submitted that this Court has extraordinary power under Section 482 of the Cr.P.C. to grant relief to the applicant in the facts and circumstances of the present case. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of *Anand Kumar Mohatta Vs. State (Govt. of*

NCT of Delhi) Department of Home reported in AIR 2019 SC (Criminal) 310. It was submitted that continuation of the criminal proceedings in the facts and circumstances of the present case, would amount to unnecessary harassment of the applicant, particularly when on the same set of allegations, he stood exonerated in the departmental enquiry. In addition, it was submitted that in the absence of sanction, the criminal proceeding initiated against the applicant could not proceed and that for this reason also, the present application deserved to be allowed.

15] On the other hand, Mr. Doifode, learned Additional Public Prosecutor appearing on behalf of non-applicant No.1/State and Mr. V.H. Kedar, learned counsel appearing for non-applicant No.2 i.e. informant - complainant, submitted that the present application deserved to be dismissed on the short ground that the applicant had already availed of the remedy of discharge, which had been rejected by the Magistrate. The only avenue available for the applicant, was to file an appropriate revision application in accordance with law before this Court. According to the learned counsel appearing for the non-

applicants, the applicant having initially filed an application under Section 482 of the Cr.P.C. to challenge the F.I.R. and having withdrawn the same for applying for discharge upon the charge-sheet being filed, the present application was nothing but an abuse of the process of the Court.

16] It was further submitted that merely because the applicant stood exonerated in the departmental enquiry, the same could not be a ground for quashing of the F.I.R. and the charge-sheet. It was submitted that statements recorded during the course of investigation did *prima facie* indicate the involvement of the applicant in the alleged offences and that the essential ingredients of the said offences were clearly made out. It was submitted that the allegations were serious in nature and that therefore, the applicant ought not to be granted any relief at this stage, particularly because a clear case was made out for the matter to go to trial. On the aspect of sanction, the learned counsel appearing for the non-applicants relied upon judgment of the Hon'ble Supreme Court in the case of *Shambhoo Nath Misra Vs. State of U.P. and others reported in AIR 1997 SC 2102*, to submit that in

the facts of the present case concerning allegations of fabrication of the record, sanction for prosecution was not necessary. On this basis, it was submitted that the application deserved to be dismissed.

17] Heard learned counsel appearing for the rival parties and perused the material on record. It is necessary to first deal with the preliminary objection raised on behalf of the non-applicants that the present application deserves to be dismissed, for the reason that the applicant had already applied for discharge and the application was dismissed by the Magistrate. According to the learned counsel for the non-applicants, the only remedy available to the applicant in this situation, was to file an appropriate revision application before this Court. To answer the said contention, the applicant has relied upon judgment of the Hon'ble Supreme Court in the case of ***Prabhu Chawla Vs. State of Rajasthan and another*** (supra). In the said judgment, the Hon'ble Supreme Court has held that availability of alternative remedy of revision under Section 397 of the Cr.P.C. cannot by itself be a ground to dismiss the application filed under Section 482 of the

Cr.P.C. In the said judgment, the Hon'ble Supreme Court relied upon earlier judgments where it was held that in a given situation, this Court can exercise its inherent power under Section 482 of the Cr.P.C., if a case is made out by the applicant and that nothing contained in Section 397(2) of the Cr.P.C. can limit or affect the exercise of inherent power by the High Court. In paragraph 6 of the said judgment, the Hon'ble Supreme Court held as follows:

“6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482, Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.”. We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482, Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.”

18] In view of the aforesaid position of law, we are of the opinion that merely because the remedy of revision was available to the applicant to challenge the order of the Magistrate rejecting his application for discharge, it cannot be said that the present application under Section 482 of the Cr.P.C. is not maintainable. We are conscious that in such circumstances, the applicant is required to make out a case that further continuation of the criminal proceedings would amount to an abuse of the process of law and that to secure the ends of justice, this Court would certainly exercise its inherent power. Therefore, it becomes necessary to examine the contention raised on behalf of the applicant that continuation of the criminal proceedings in the facts and circumstances of the present case, would indeed amount to an abuse of the process of the law.

19] In order to buttress the aforesaid contention, the applicant has relied upon the position of law, clarified by the Hon'ble Supreme Court in the case of *Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and another* (supra). It has been held therein that exoneration in a

departmental enquiry on same set of allegations ought to result in terminating the criminal proceedings initiated against the accused person. The basis of the said position of law is that the standard of proof in a criminal proceeding, on the touchstone of proof beyond reasonable doubt, is much higher than the lower standard of proof in a departmental enquiry, which is based on preponderance of probabilities. The position of law in that regard was clarified in the judgment in the case of ***Radheshyam Kejriwal Vs. State of West Bengal reported in (2011) 3 SCC 581***, wherein it was held as under:

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent*

court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

20] The Hon’ble Supreme Court further concluded in the said judgment as follows:

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

21] The Hon’ble Supreme Court in the case of ***Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW,***

CBI and another (supra), quoted the above paragraphs 38 and 39 of the judgment in the case of *Radheshyam Kejriwal Vs. State of West Bengal* (supra), approvingly and in the facts of the said case held that the petitioner therein need not face criminal proceedings.

22] It is vehemently submitted on behalf of the applicant that the position of law as laid down by the Hon'ble Supreme Court in the case of *Radheshyam Kejriwal Vs. State of West Bengal* (supra) and reiterated in the case of *Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and another* (supra), applies in favour of the applicant. In order to examine the said contention, it would be necessary to refer to the findings of the Enquiry Officer in the aforesaid enquiry report, forwarded to the applicant alongwith letter dated 14.08.2014. We find that the charge-sheet dated 18.12.2013, indeed levelled allegations against the applicant, akin to the allegations made in the report, leading to the registration of the aforesaid F.I.R. In the departmental enquiry, statements of employees of the Corporation were recorded and it was found that the applicant

could not be held guilty of the charges, as the alleged overwriting and fabrications, could not be attributable to the applicant, or even on the direction of the applicant. It was found that the co-accused Mr. Belge specifically stated that the Security and Vigilance Officer, who had initially enquired into the matter, had exerted pressure on the co-accused to falsely implicate the applicant. It was found that in such circumstances, at worst, the applicant could be said to have been negligent in supervising the functioning of his sub-ordinates, while he was working as the Depot Manager of the Corporation, when the incident occurred on 07.03.2013. On this basis, it was concluded that no action could be taken against the applicant, in pursuance of the aforesaid charge-sheet, which led to the departmental enquiry, particularly when the applicant was already censured for negligence.

23] When the statements of witnesses and the material placed alongwith the charge-sheet submitted in pursuance of the aforesaid F.I.R., are considered, it is found that such investigation was virtually based on the very same allegations that were levelled in the departmental enquiry. The statements of witnesses show

that the F.I.R. itself was registered after about 9 months. It is also found that the Investigating Authority is placing reliance on statements of two employees of the Corporation i.e. Mr. Wahane and Mr. Talekar, who were found to have made conflicting statements in the departmental enquiry. It was found that at one place, they had implicated the applicant as the person, at whose behest the alleged overwriting had taken place and at another place, they had not implicated the applicant. The only statement that then remains is that of the co-accused Mr. Belge. In fact, statement of the Accountant Mr. Nanhe shows that he found the overwriting in the register as well as the receipts issued by the petrol pump and when he brought the same to the notice of the applicant, who was working as the Depot Manager, the first direction given by the applicant was to stop processing of the bills on the basis of such documents and to stop payment for filling of diesel on the date of the incident, till the matter was enquired into. The statement of the Accountant, in fact, indicates an appropriate step taken by the applicant as the Depot Manager of the Corporation. It is also an admitted position that payment was not disbursed by the Corporation for the diesel filled on the date

of the incident.

24] All other statements of the so-called witnesses during the course of investigation, show that they stated about being completely unaware as to who was responsible for the overwriting and the fabrications and that they came to know much later that criminal investigation was initiated against the applicant and the co-accused persons. Even as regards the statement of co-accused Mr. Belge that he had handed over cash amount of Rs.5,000/- to the applicant, which was allegedly given by the employee of the petrol pump i.e. the other co-accused person, is found to be in contradiction to the statement of the very same person in the departmental enquiry, where he stated that the aforesaid allegation was made against the applicant under the threat given by the Security and Vigilance Officer. It is significant that the F.I.R. stood registered after a delay of about 9 months at the behest of the same Security and Vigilance Officer. Therefore, the entire material available alongwith the charge-sheet, including the statements of the witnesses even *prima facie* does not indicate involvement of the applicant.

25] Insofar as ingredients of the offences are concerned, the allegation pertaining to Section 468 of the I.P.C. regarding forgery needs to be appreciated in the backdrop of the law laid down by the Hon'ble Supreme Court in that regard. In the case of ***Sheila Sebastian Vs. R. Jawaharraj and another Etc.*** (supra), the Hon'ble Supreme Court in the context of the offence of forgery held as follows:

“19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.”

26] Thus, Section 463 of the I.P.C. becomes crucial in this context, which pertains to definition of forgery and it opens with

the word “whoever makes a false document” with Section 464 defining as to what is “making a false document”. A perusal of the said provisions would show that the aforesaid offence necessarily requires *prima facie* material to show that the person against whom the allegations are made, has made or created a false document or indulged in forgery. In the present case, the material on record does not even *prima facie* disclose the ingredients of the said offence.

27] This has been further elaborated in the judgment of the Hon’ble Supreme Court in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another***(supra). The said judgment also deals with the ingredients of the offence of cheating defined in Section 415 of the I.P.C. and made punishable under Section 420 thereof. Applying the ratio of the aforesaid judgment to the facts of the present case, it is found that even *prima facie* the ingredients of the offences alleged against the applicant are not made out. The offence under Section 409 of the I.P.C. involving criminal breach of trust by a public servant would necessarily require the material on record to demonstrate ingredients of

criminal breach of trust as defined in Section 405 of the I.P.C. In the present case, as noted above, barring the statement of co-accused Mr. Belge, there is nothing to even *prima facie* indicate that the applicant had dishonestly misappropriated property of the Corporation entrusted to him. Even the statement of the co-accused Mr. Belge, when compared with his specific statement made in the departmental enquiry, shows that according to him, the Security and Vigilance Officer had threatened and coerced him to make such statements against the applicant. Therefore, this Court is convinced that even *prima facie* the allegations made against the applicant do not disclose the ingredients of the said offence, on the basis of the material placed on record with the charge-sheet.

28] As regards the contention pertaining to absence of sanction, this Court agrees with the submission made on behalf of the non-applicants that when fabrication and misappropriation of funds by a public servant are involved, sanction for prosecution may not be necessary, because such acts cannot be said to be acts done as part of the official duty, as held by the Hon'ble Supreme

Court in the *Shambhoo Nath Misra Vs. State of U.P. and others* (supra). But, the question of sanction pales into insignificance, in view of the above conclusion that we have arrived at, to the effect that exoneration of the applicant in the departmental enquiry for virtually the same allegations ought to lead to termination of the criminal proceedings. To permit the criminal proceedings to continue further would amount to an abuse of the process of law and ends of justice will be met by invoking our inherent power under Section 482 of the Cr.P.C. for quashing the F.I.R. as well as the charge-sheet. Considering the aforesaid conclusions, it becomes obvious that the Magistrate erred in refusing to discharge the applicant.

29] As noted above, the Enquiry Officer in the departmental enquiry found that, at worst, the applicant could be said to have been negligent in supervising his sub-ordinates, for which he had already suffered the penalty of censure. In these circumstances, we are inclined to agree with the learned counsel for the applicant that the present application deserves to be allowed.

30] In view of the above, the application is **allowed** in terms of the prayers made in the application.

31] Consequently, F.I.R. No.238 of 2013 dated 03.12.2013 registered against the applicant at Police Station Arvi, Dist Wardha, as also the charge-sheet bearing No.14/14 dated 06.02.2014, are quashed and set aside. The order of the Magistrate dated 21/08/2020, dismissing the application for discharge filed by the applicant, is rendered meaningless and it is consequentially set aside.

32] As a result, Regular Criminal Case (RCC) No.29 of 2014, pending before the Court of Judicial Magistrate, First Class, Arvi, District Wardha, is also quashed and set aside.

(VALMIKI SA MENEZES, J.)

(MANISH PITALE, J.)

Vijay