

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.223 OF 2023

Pandit s/o Shivram Tiparse

Petitioner

Versus

The State of Maharashtra

Respondent

Mr. D. A. Mane, Advocate for the petitioner.

Mr. V. S. Badakh, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 6th SEPTEMBER, 2023.

PER COURT :

1. This petition takes exception to the order dated 25th January, 2023 passed by learned Additional Sessions Judge, Latur in Criminal Revision Application No. 73/2022 dismissing the revision challenging order dated 9th November, 2022, passed by learned Judicial Magistrate First Class, Latur below Exhibit 264 in RCC No. 1331/2020 dismissing the application for discharge.

2. Petitioner, who is Assistant Registrar at Sub-Registrar's office, Renapur, is an accused in RCC No. 1331/2020. It is alleged in the First Information Report against him that in collusion with the co-accused, he registered a document. It is alleged that the said

document is in the nature of declaration deed. After completion of investigation, charge-sheet came to be filed against petitioner and the co-accused.

3. Learned counsel for petitioner submits that even accepting allegations in the First Information Report against the present petitioner to be true, the act allegedly done by him is in discharge of his duty as Assistant Registrar. It is his submission that in such case, except for sanction under Section 197 of the Code of Criminal Procedure, no cognizance could be taken by the Court. It is submitted that petitioner is a Class I officer and there is no dispute about the fact that sanction of Government is essential for his removal.

4. Learned APP opposed the said submission by referring to the allegations made against the petitioner in the First Information Report. It is submitted that there is material on record to indicate that the petitioner was in collusion with the co-accused. According to him, it was expected from the petitioner to register the document if it complies the requirement of law. Thus, it is the case of prosecution

that the act done by the petitioner cannot be considered to be in discharge of his lawful duty.

5. Perusal of the First Information Report clearly indicates that the document in question is not created by the petitioner. The allegation against him is that he has registered the said document which is not lawful. Needless to say that the act of registration of document comes within discharge of duty of Assistant Registrar in the office of Sub-Registrar. The Hon'ble Apex Court in the case of D. Devaraja vs. Owais Sabeer Hussain, (2020) 7 SCC 695 has referred to judgment in case of Virupaxappa Veerappa Kadampur vs. State of Mysore, AIR 1963 SC 849 and has recorded observations therein thus :-

“10. It appears to us that the words “under colour of duty” have been used in Section 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchanama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in *Stroud's Dictionary* “as a veil to his falsehood”. The acts thus done in dereliction

of his duty must be held to have been done “under colour of the duty.”

6. The facts of the said case and the facts of the present case are similar. Even if it is accepted that petitioner has committed error or has wrongly registered the document in question, the act must be held to be have been done under colour of the duty of petitioner. Hence, prosecution cannot be permitted to avoid provision of Section 197 of Code of Criminal Procedure to prosecute him. Admittedly, neither sanction has been sought nor obtained from the competent authority before taking cognizance of the offence. In view of this, since prosecution of the petitioner is without obtaining sanction from the competent authority, and as the act in question is purported to have been done in discharge of his duty, this is a fit case for discharge of accused. Hence, impugned orders are set aside. Application Exhibit 264 in RCC No. 1331/2020 for discharge is allowed. Petition is allowed.

(R. M. JOSHI)
Judge