



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 393 OF 2023

Kailas Bhagwat Chindhe

...Petitioner

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL WRIT PETITION NO. 384 OF 2023

Raosaheb Yadav Auti

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. A. S. Khedkar, Advocate for the Petitioners.

Mr. S. B. Jadhav, APP for Respondent – State in
WP/384/2023.

Mr. N. B. Patil, APP for Respondent – State in
ABA/393/2023.

CORAM : R.M. JOSHI, J.

DATE : DECEMBER 15, 2023

PER COURT:

1. Petitioners are accused in R.C.C. No. 669/2013 pending before learned JMFC, Ahmednagar and being aggrieved by the order dated 30.07.2022 passed below Exh. 496 & 505 rejecting plea for discharge and order passed by Revisional Court dated 28.09.2022 confirming the said orders.

2. Petitioners are arraigned as accused in connection with FIR No. 398/2012 in connection with offences punishable under Sections 420, 465, 468, 471, 193 read with Section 34 of the Indian Penal Code lodged at the instance of Education Officer (Primary), Zilla Parishad, Ahmednagar. It is alleged in the report that in the month of May, 2012 process of general transfers of teachers was initiated. There was Government Resolution dated 20.04.2012 which provides that teachers with disability would be exempted from the process of general transfer and disability certificates were asked to be produced. As per the said Government Resolution number of teachers submitted disability certificate. The said certificates were forwarded to Civil Surgeon for verification, who in turn, issued written communication stating that out of total certificates submitted by the teachers 76 certificates are found to be bogus. A complaint was lodged against those 76 teachers whose disability certificates were alleged to be bogus. After completion of investigation, charge-sheet came to be filed.

3. Petitioners filed discharge application and

also placed reliance on documents including enquiry report exonerating Petitioners in departmental enquiry. The said application came to be rejected on 30.07.2022. Being aggrieved by the said order, Revision Applications being nos. 76/2022 and 77/2022 respectively were preferred under Section 397 of Code of Criminal Procedure, which was rejected by confirming the order passed by learned JMFC.

4. It is the contention of the Petitioners that the both Courts below have failed to appreciate that for obtainment of disability certificate, Petitioners had approached Civil Hospital, Ahmednagar and after their physical examination certificates in question were issued. It is also claimed that as per the prescribed procedure of the hospital certificates bear stamp of the hospital. It is claimed that there is no allegation that the stamp of the hospital is bogus on certificates as well as on the endorsement made on the ration card. It is claimed by the Petitioner that Petitioner has obtained certificate on 06.04.2010 and the Government Resolution in question was issued after one year thereof and hence, in any case, the Petitioner

cannot be said to have submitted bogus certificate for the purpose of taking benefit of the transfer policy. It is also claimed that Chief Executive Officer, Z.P. had initiated departmental enquiry against the Petitioners, on the same ground as raised in the FIR, and by order dated 30.05.2014 Petitioners were exonerated therefrom. It is thus contention of the Petitioners that since the Petitioners were exonerated on the basis of same facts and circumstances, they seek discharge. They also sought parity on the ground that similarly placed accused nos. 78 to 92 have been discharged by learned JMFC, Ahmednagar.

5. Learned Counsel for the Petitioners submitted that allegation with regard to the bogus certificates were submitted in order to get benefit of transfer policy of year 2012 is not attributable to the Petitioners as they were not covered by the transfer of the said year. It is submitted that statement of Civil Surgeon who claimed that 76 certificates are bogus is not recorded during the course of investigation and as such, even if trial is conducted the offences alleged against Petitioners cannot be established. It is

submitted that medical officer who has issued certificates is also an accused and hence, said certificates cannot be proved to be bogus as the co-accused cannot be called upon to step into witness box on behalf of prosecution. Without prejudice to their submissions, it is sought to be contended that Petitioners are entitled for discharge as they are already exonerated in the departmental enquiry and chances of conviction in the criminal trial involving the same fact is bleak. To support these submissions, reliance is placed on judgment of Hon'ble Apex Court in case of Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI, AIR ONLINE 2020 SC 809. He also placed reliance in judgment of this Court in case of Ramesh Manohar Madawi Vs. State of Maharashtra, Criminal Application No. 731/20250.

6. Learned APP opposed the Petitions with contention that there is more than sufficient evidence on record in order to frame charge against Petitioners. It is his contention that this is not the case where if the evidence of prosecution goes uncontroverted it will not result into conviction of the accused. It is his

further contention that allegation against the Petitioners is of preparation of bogus document and its submission to department and hence, it would be immaterial as to whether the said document was submitted in pursuance to the Government Resolution of 2012 or otherwise. It is his submission that there are statements of witnesses from hospital indicating that the certificates issued by the Petitioners are not genuine. It is submitted that even though certificate is issued by co-accused, there could be other evidence by which the said fact can be proved.

7. First contention of the Petitioners is about they being entitled for discharge for the reason that the statement of Civil Surgeon is not recorded, does not hold water as there are statements of other witnesses from the District Hospital indicating that certificates in question including certificates submitted by the Petitioners were not issued by the District Hospital. The said statements if go without challenge would be sufficient to prove the charge against the Petitioners. Thus, this Court find no substance in the contention that merely because the

statements of the Civil Surgeon is not recorded or doctors who issued certificate are also co-accused the offence cannot be proved against the present Petitioners.

8. Second contention of the Petitioners is about their exoneration in the departmental enquiry. No doubt, Hon'ble Apex Court in case of Ashoo Tewari (supra) has held that accused was exonerated by CVC in departmental proceedings, chances of his conviction in criminal trial involving the same facts appear to be bleak and hence, accused were held to be entitled for discharge. The said judgment certainly binds this Court. The Hon'ble Apex Court has culled out the ratio of discharge. In clause (vii) it is held that *"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"*. This judgment, therefore, clearly shows that in case of exoneration is on merits, it is not permissible for continuation of criminal

cases. In the instant case, however, perusal of the report of Enquiry Officer shows that even all witnesses whose statements forms part of the charge-sheet were not examined in the said enquiry. *Prima facie* it appears that relevant witnesses were not even called in the enquiry. In fact the enquiry officer has not recorded any finding that the certificate submitted by the Petitioners is genuine. In considered view of this Court the said exoneration being not on merit, and not based on the same evidence which is likely to be led in the criminal trial, Petitioners are not entitled to get benefit of the judgment of Hon'ble Apex Court.

9. As far as claim of the parity is concerned, there is nothing before this Court to draw conclusion that the findings of exoneration against the co-accused is on merit or otherwise. Hence, their discharge cannot become a ground for allowing Petition and discharging present Petitioners.

11. Consideration of material evidence in the charge-sheet if goes unchallenged would be justified to prove guilt of Petitioners. There is more than enough evidence to make out strong suspicion of commission of

crime by Petitioners and hence, it is fit case to frame charge against them. In view of above, this Court finds no substance in challenge to the impugned orders. Hence, Petitions stand dismissed. Pending application, if any, are also disposed of.

(R.M. JOSHI, J.)

Malani