

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

CRIMINAL WRIT PETITION NO. 1461 OF 2020

Sharadchandra @ Sharad Govindrao Kadam
and others

.. Petitioners

Versus

The State of Maharashtra
Through its Police Station
Mukramabad, Tq. Mukhed,
Dist. Nanded

.. Respondent

Mr. Harshal Prakash Randhir, Advocate h/f Mr. Anil S. Shivpuje,
Advocate for the Petitioners.
Mr. P. M. Kulkarni, APP for Respondent.

**WITH
CRIMINAL WRIT PETITION NO. 1465 OF 2020**

Nandkishor @ Nandu Balaji Gavhane
and another

.. Petitioners

Versus

The State of Maharashtra
Through its Police Station
Mukramabad, Tq. Mukhed,
Dist. Nanded

.. Respondent

Mr. Harshal Prakash Randhir, Advocate h/f Mr. Anil S. Shivpuje,
Advocate for the Petitioners.
Mr. P. M. Kulkarni, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 23rd JANUARY, 2023.

P.C. :-

. Heard learned advocate for the petitioners. A short question involved in the petitions is that the informant lodged the complaint against the present petitioners and some other persons. In the FIR, the names of these persons are mentioned. Subsequently, even a statement under Section 164 of the Code of Criminal Procedure (for short "Cr.P.C.") also came to be recorded. However, in case of Criminal Writ Petition No. 1465/2020 the names of the petitioners are not mentioned in statement under Section 164 of the Cr.P.C. Subsequently, the informant communicated to the SDPO by communication dated 16.09.2016 that in his statement recorded by the police on the basis of which FIR is lodged was only because of some confusion. He communicated that as a matter of fact, these persons were out of station and were not present at the time of incident in the village.

2. Thus, it is only on this basis the application came to be filed at Exh. 86 and Exh. 88 by the petitioners in Criminal Writ Petition Nos. 1461/2020 and 1465/2020 respectively seeking discharge. There are some other grounds taken that the petitioners are in service and they were not present as a matter of fact at the time of incident. However, the said grounds are on merits of the case. The learned Additional Sessions Judge by considering the application and the

material before him filed along with charge-sheet observed that, the appreciation of evidence cannot be done while considering the application for discharge. The statements recorded in the course of investigation cannot be made analyzed and appreciated. The Court by considering the entire charge-sheet and the statements recorded by the police during investigation and also statement under Section 164 of the Cr.P.C. was pleased to reject the applications by common order dated 02.03.2020 and disposed off the applications. Challenging this order, these petitions are filed.

3. Learned advocate for the petitioners submits that the informant himself has given subsequent statement to the SDPO that he has wrongly mentioned the names of these petitioners. He also mentioned that the persons were not present when the alleged incident has taken place and therefore, it is a case for discharge of the petitioners. The learned Additional Sessions Judge has failed to consider that, in view of the statement of the informant itself, there is no purpose in framing the charge against the petitioners.

4. The learned A.P.P. vehemently opposes the petitions stating that, the Court has rightly passed an order. The Court has taken into consideration the entire material before the Court. Merely because some statements are contrary to some other statements is no ground to

discharge the accused persons from the trial.

5. Considering the submissions, this Court finds that the reason given by the learned Trial Court is correct. No case is made out to call for interference at the hands of this Court. The present writ petitions therefore deserve to be dismissed and are dismissed.

(KISHORE C. SANT, J.)

PS.B.