

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Writ Petition No. 1124 of 2018

Dr. Kamal Chandra Tiwari ... Petitioner
v/s.
The State of Maharashtra & anr. ... Respondents

Mr Jagdish G. Aradwad (Reddy) a/w. Ashwini B. Jadhav for the petitioner.

Mr Satyavrat Joshi for respondent No.3.

Ms. M.H. Mohite, APP for the State.

Mr. Anand Pagare, PI attached to PTC, Nanvij, Daund, Pune

**CORAM : NITIN W. SAMBRE &
R.N.LADDHA, JJ.**

DATE : 4th August 2023

Order (Per Nitin W.Sambre):

Digitally
signed by
LATA SUNIL
PANJWANI
Date:
2023.10.05
17:58:49
+0530

Leave to amend, to add Mr Anand Pagar, PI as Respondent No.3.

2. Heard learned counsel for the parties.

3. The prayer is for quashing of the FIR and consequential charge-sheet in Crime No.36/2016 punishable under Sections 420,467,468 and 471 of the IPC.

4. The genesis of the prosecution story is, on 7th May, 2016, complainant Dr. Vinaydeep Singh working with National Defence Academy, Khadakwasla, Pune in his complaint alleged that he is authorized by senior officer to lodge complaint against the petitioner. According to him, the petitioner was initially appointed as Ad-hoc and thereafter regular Assistant Professor since 1997 with the said institute. The petitioner produced two certificates certifying his degree of disability viz. dated 26th February, 2009 and 1st December, 2012. Based on the aforesaid certificates, petitioner has drawn certain benefits as are available to handicap person as per the Persons With Disabilities Act, 1995. It is claimed that vide order dated 30th December, 2014, the Chief Commissioner for Persons with Disabilities, Delhi has directed the petitioner to appear before the Medical Board for verification of degree of disability of the petitioner which the petitioner has not complied with. In this background, his office has forwarded disability certificate dated 16th February, 2009 and 1st December, 2012 issued by the Sassoon Hospital for verification. The Sassoon Hospital accordingly opined that from the available record, the documents viz. the disability certificates of the petitioner can not be said to have been issued by it. The doctors whose signatures are reflected on said certificates have stated that they are not signatory to the same. As such drawing an inference that the disability certificate produced by the petitioner is not genuine complaint came to be lodged.

5. In this this background, the offence being Crime No.36 of 2016 punishable under Sections 420, 467, 468 and 471 of the IPC came to be registered. After the investigation, the petitioner came to be charge-sheeted.

6. The quashing of the prosecution is sought on the ground that original record regarding issuance of the handicap certificate was not traceable with Sassoon Hospital, Pune. It is claimed that subsequently the record was made available by the Sassoon Hospital. From said record it can be easily inferred that the certificate issued in favour of the petitioner is genuine one. Once the certificate issued in favour of the petitioner was found to be genuine as could be inferred from the communication to that effect issued by the Sassoon Hospital, the investigating officer ought not to have charge-sheeted the petitioner. The further contentions are, the fact about the availability of original file in relation to issuance of the handicap certificate in favour of the petitioner was brought to the notice of the investigation officer. The investigating officer intentionally and deliberately overlooked the same and purely with an intention to initiate malafide prosecution has charge-sheeted the petitioner.

7. In this background, this Court, having noticed that the Sassoon Hospital on 9th September 2016 has informed the investigating officer

about missing record being traced and available with it for verification, in relation to petitioner's disability certificate has called upon the investigating officer to file his personal affidavit explaining whether the record traced out as per the communication dated 9th September 2016 was looked into.

8. It appears that in compliance with the aforesaid order dated 8th February 2019, the Investigating Officer has placed on record affidavit duly sworn by him.

9. Perusal of the affidavit depicts that the query posed by Court in its order dated 8th February 2019 was intentionally ignored. The affidavit placed on record by the said officer is not commenting on whether he has looked into the letter dated 9th September 2016 and record traced by the Sassoon Hospital in the matter of issuance of disability certificate in favour of the petitioner.

10. Subsequent to above, this Court having noticed the aforesaid conduct of ignoring the order of this Court, passed a detail order on 28th June 2023 thereby issuing contempt notice to the investigating officer and directing him to remain present before this Court so as to explain the aforesaid default so also he was put to notice as to why order of payment of compensation of Rs.10 lacs be not ordered as the

investigating officer has maliciously charge-sheeted the petitioner ignoring the availability of original record with the Sassoon Hospital. The investigating officer subsequent thereto has filed an affidavit trying to explain his aforesaid serious default. The officer has stated that he has recorded the statement of Doctors who are shown to be the signatory to the disability certificate namely Dr. Swapnil Bhise and Abhijeet Mane. It is further stated that the said Doctors, when confronted with the photocopy of the disability certificate, have stated that they are not signatory to the certificate issued in favour of the petitioner.

11. He has first attachment with the police station and he was lacking experience of field investigation. The investigating officer has further stated that it was a bonafide mistake on his part and he repents and regrets the same. The investigating officer has tendered an unconditional apology to the petitioner in writing and also to this Court through affidavit served on the petitioner which is produced on record. As such the investigating officer has tried to establish that it was a genuine mistake on his part and he has no intention to initiate false prosecution against the petitioner. He has further stated that in future he shall be diligent in discharging his duties and shall ensure that such mistake shall not be committed.

12. Initially, the counsel for the petitioner has stated that the disciplinary proceedings be directed against the investigating officer and he should also be prosecuted for initiating malafide prosecution against the petitioner, however, he would urge that the said investigating officer be put to stringent condition so that he should realise his mistake and same should be pinching.

13. The learned counsel for the petitioner submits that the petitioner is not interested in amount of compensation from the investigating officer and same can be diverted to any of the social organization, to which this Court deem it appropriate to order, in the facts and circumstances of the case.

14. We have appreciated the aforesaid submissions. The aforesaid offence being Crime No.36/2016 punishable under sections 420,467,468 and 471 of the IPC came to be registered and investigated by the officer Mr. Anand N. Pagare who is presently posted as Inspector attached to Police Training Centre, Nanvij, Daund, Pune.

15. It appears that the official of the National Defence Academy lodged a complaint on 7th May 2016 stating that the petitioner was appointed as an Assistant Professor, Sociology in National Defence Academy. It is claimed that petitioner has produced a disability

certificate dated 1st December 2012 and 26th February 2009 certifying the disability of 41 %.

16. The petitioner thereafter was directed to appear before the medical Board as it is claimed by him that he holds a disability certificate which speaks of his permanent disability referred above. Subsequently, the aforesaid certificate of the petitioner was sent for verification in which one of the signatory was Dr. Swapnil Bhise, Assistant Professor, Orthopedic Department, Sassoon Hospital, Pune. Dr. Swapnil Bhise was confronted by the investigating officer by showing his signature on the photocopy of the disability certificate dated 1st December 2022 wherein he is claimed to have stated that certificate is not signed by him which led to further investigation in the matter.

17. It appears that the investigating officer has tried to get the record in relation to the disability certificate from the Sassoon Hospital, however, at the relevant time the record was not traceable.

18. It appears that on 23rd May 2016, the Medical Superintendent of Sassoon Hospital, Pune issued a communication about discovery of the register containing the entries as regards the medical certificate issued in favour of the petitioner.

19. Subsequent thereto, vide another communication dated 9th September 2016, the medical Superintendent has informed the investigating officer i.e aforesaid officer that during the course of cleaning of their office, they have also traced the original record in relation to issuance of disability certificate in favour of the petitioner and accordingly it was informed that earlier communication be correctly read to be stating that the original record in relation of disability certificate was available with the Sassoon Hospital.

20. At this stage it is not out of place to observe that said record being public document is admissible in evidence, since same was coming from official custody.

21. Despite the aforesaid communication, it appears that the investigating officer has not looked into the same though the disability certificate dated 1st December 2012 issued by the Sassoon Hospital was a genuine one as could be inferred from the original record with the Sassoon Hospital. The investigating officer ignoring the aforesaid has proceeded to charge-sheet the petitioner vide charge-sheet dated 19th July 2017 thereby falsely stating that the petitioner has produced a false certificate which certifies his disability to the extent of 41 %.

22. After receipt of the communication dated 9th September, 2016

issued by the Medical Superintendent, Sassoon Hospital intimating the Investigating Officer about tracing of original record of issuance of disability certificate in favour of the petitioner, the least that was expected of the Investigating Officer was to verify the genuineness of the disability certificate, with a photocopy of which was available with him. The Investigating Officer ought to have visited the Sassoon Hospital, looked into the original record and should have conducted further investigation in accordance with the provisions of Chapter XII of the CrPC.

23. The Investigating Officer has not taken pains to conduct himself in accordance with the provisions of Chapter XII of the CrPC. Based on the statement of Dr. Swapnil Bhise and Dr. Abhijeet Mane he has tried to justify the investigation. Statement of said witnesses were recorded before the original record of Sassoon Hospital was traced that too based on photocopy of the disability certificate. Even today also, when the charge-sheet is questioned by the petitioner claiming that the alleged certificate of disability which is relied on by the Investigating Officer for filing charge-sheet is a genuine one, still, there is no further investigation in the matter. Rather the entire investigation depicts that the petitioner was charge-sheeted by the Investigating Officer in malafide manner and contrary to the provisions of Chapter XII of the CrPC.

24. Counsel for the petitioner has insisted that the petitioner, a disabled person, who is an academician, is made to suffer because of the vindictive attitude of the Investigating Officer Mr. Anand Pagare. According to him, the act of the Investigating Officer is violating the fundamental rights of the petitioner guaranteed under Article 21 of the Constitution of India, as the petitioner has every right to live with self-respect and dignity. If we appreciate the aforesaid submissions, the fact remains that the Investigating Officer Mr. Anand Pagare who has carried out the investigation, has willfully given disregards to the important public documents when the fact of availability of such documents was within his knowledge. In spite of above, he being in-charge of the investigation has falsely implicated a disabled person by carrying out false investigation.

25. The aforesaid false prosecution against the petitioner has prompted him to prefer this petition.

26. We have already noted hereinabove that vide communication dated 9th September 2016, the investigating officer was apprised about availability of the original record as regards the issuance of disability certificate dated 1st December 2022 in favour of the petitioner by the Sassoon Hospital.

27. Though it is claimed by the investigating officer that charge-sheet is based on statement given by two Doctors namely Dr. Swapnil Bhise and Dr. Abhijeet Mane disowning their signature, however, subsequent thereto original record was traced and was available for investigation and verification so as to find out the certificate issued in favour of the petitioner to be genuine or not.

28. The investigating officer has failed to look into the same though he was duty bound to appreciate the fact about availability of original record pertaining to issuance of the disability certificate in favour of the petitioner.

29. As such it can be said that the necessary ingredients of the offences alleged against the petitioner punishable under Sections 420 i.e. cheating; 467, 468, 471 i.e. forgery; cannot be inferred.

30. As far as allegation of cheating is concerned, the same pertains to petitioner having cheated his employer by producing false disability certificate which subsequently was found to be genuine as could be inferred from the communication issued by the Sassoon Hospital on 9th September 2016.

31. Apart from above, the offence of forgery of the government

record viz. punishable under Sections 467,468 and 471 also cannot be inferred as no element of forgery could be noticed from the investigation papers and also from original record of the Sassoon Hospital.

32. As such it is to be inferred that initiation of the prosecution against the petitioner for the offence referred above is contrary to the very public record available with the Sassoon Hospital. Even otherwise, there are no ingredients to satisfy the offence alleged from the entire material available. That being so, the very prosecution against the petitioner for the offences alleged under Sections 420, 467, 468, 471 is not sustainable. As such the impugned FIR bearing Crime No.36/2016 dated 7th May 2016 registered with Khadakwasla Police Station, Pune punishable under Sections 420, 467, 468 and 471 of the IPC and the consequential charge-sheet and the proceedings arising from it are hereby quashed and set aside.

33. This takes us to the next issue viz. whether the investigating officer namely Mr. Anand Pagare can be proceeded against the provisions of Contempt of Court Act, whether he should be made to pay compensation to the petitioner and whether the disciplinary proceedings should be directed against him ?

34. We have heard the said officer through his Counsel Mr Satyavrat Joshi who has not only in a humble way tendered an unconditional apology to the petitioner but also to this Court stating that he regrets for the bonafide mistake on his part and out of repent he has also tendered an unconditional apology to the petitioner which is part of record of this Court.

35. When we have called for response of the counsel for the petitioner, the counsel for petitioner has stated personally petitioner is not interested in having compensation from the said officer, however, it is claimed that there should be pinching order to the said officer so as to make him realise his intentional conduct which he should not repeat in future as the said officer has a long way to go in service.

36. Such act of the Investigating Officer, in our opinion, can be termed as causing mental agony, lowering down dignity and ill-treating the petitioner, an academician. The prosecution initiated by the said officer can be termed as malicious which has not only caused harassment to the petitioner but also immeasurable anguish. The fact that the petitioner, a handicap person is an academician having good repute an employee of National Defence Academy, Pune and the acts done with clandestine manner by the Investigating Officer, in our opinion,

warrant award of compensation as has been prayed by him. Counsel for the petitioner magnanimously stated that he is not interested in the amount of compensation which can be made over to the Legal Services Authority, however, the Investigating Officer should realize his mistake which should be pinching for bias and malafide criminal prosecution against the petitioner. In the backdrop of aforesaid observations, we deem it appropriate to award compensation of Rs.25,000/- by Mr.Anand Pagare, Investigating Officer to be paid to the Maharashtra State Legal Services Authority within period of six months from today. The amount be paid by the State Government to be recovered from the salary of Mr. Anand Pagare, the then Investigating Officer in the matter. So as to substantiate the award of compensation, we can rely on recent judgment of Apex Court in the matter of ***S. Nambinarayanan Vs. Siby Mathews & Ors.*** reported in ***AIR 2018 SC 5112.***

37. The affidavit of compliance about payment of aforesaid compensation with the Maharashtra Legal Services Authority as has been suggested by counsel for the petitioner be placed on record within a period of 6 months from today.

38. Mr.Satyavrat Joshi, learned counsel for newly added

Respondent is permitted to file his Vakalatnama.

39. Writ Petition stands disposed of in the above terms.

40. As far as contempt notice is concerned, we hereby warn the investigating officer Mr Anand Pagare, Police Inspector presently attached to Police Training Centre, Nanvij Daud, Pune to be more diligent in carrying out his duty as a police officer. With above warning, we discharge the contempt notice.

R.N. LADDHA, J.

NITIN W. SAMBRE, J.

Lata Panjwani, P.S.