

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

WRIT PETITION NO.3379 OF 2021

Tanaji Laxman Ghag ..Petitioner
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. R. S. Deshpande i/by Aneesh Deshpande, for the Petitioner.
Ms. M. H. Mhatre, APP for the Respondent/State.
Mr. Anant Vadgaonkar a/w Madhuri More, for the Respondent
No.2/ACO, BMC.

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

DATE : 12th JULY, 2023

P. C. (Per Nitin W. Sambre, J.)

1. Heard.

2. The petitioner, who at relevant time was working as Assistant Chief Supervisor, (Solid Waste Management Department) with the Greater Mumbai Municipal Corporation, is seeking quashing of the FIR being Crime No.198 of 2020 registered with Mahim Police Station for the offence punishable under Sections 120B, 419, 420, 465, 467, 468 and 471 of IPC.

3. The genesis of the offence alleged against the petitioner is, the power to make appointments against leave vacancies on the post of Safai Kamgar (Class IV) vests with the Assistant Chief

Supervisor which post was manned by the petitioner in 2018.

4. During said period, four persons were illegally shown to have been appointed against the leave vacancies and as such offence came to be registered.

5. The contentions of counsel for the petitioner are, the petitioner himself is a whistle-blower. According to him, the petitioner has neither issued appointment orders to the accused persons against leave vacancies nor he is a party to such appointments. So as to substantiate aforesaid contention, our attention is invited to the very complaint lodged by the petitioner to the Senior Police Inspector, Mahim Police Station on 2nd February, 2019, thereby intimating that the four persons who are named in the complaint were illegally appointed against leave vacancies. Learned counsel would urge that against the aforesaid complaint lodged by the petitioner, no cognizance was taken by the respondent/Investigating Agency. He would further urge that based on the default report dated 12th July, 2021 on the basis of inquiry conducted by the Corporation, the petitioner is impleaded as accused. According to him, after the investigation was carried out, the Investigating Officer has already addressed communication to the Corporation on 22nd November, 2019 stating that the petitioner was not found to be involved in the alleged offence and he will be cited as a witness. It is claimed that after aforesaid communication dated 22nd November, 2019, since the default report dated 12th July,

2021 is submitted, the petitioner came to be impleaded as accused. In the default report, it is observed that the petitioner by not initiating action in the matter of illegal appointments against leave vacancies, by such consent mutely consented and continued such illegally appointed employees on the establishment of the Corporation by participating in the commission of offence.

6. In the aforesaid background, the contentions are, the petitioner cannot be held to be responsible for commission of the offence as has been alleged against him viz. of criminal conspiracy punishable under Section 120B, cheating punishable under Section 420 and forgery punishable under Section 465 of the IPC.

7. Further contentions of counsel for the petitioner are, the investigation carried out till this date if perused, no element of criminal conspiracy or forgery committed by the petitioner can be inferred.

8. Learned APP while countering aforesaid submissions would urge that the default report submitted by the office of the Inquiry Officer specifically refers to the petitioner being mute consentor to the act of illegal appointments on the posts which were lying vacant because of leave vacancy.

9. Learned APP would urge that at this stage, the Court should be slow in appreciating the evidence and as such, the

petition is liable to be dismissed.

10. We have considered the rival submissions.

11. Exh.A is a complaint preferred by the petitioner addressed to the Senior Police Inspector, Mahim West Police Station, wherein he has specifically mentioned about the names of four illegally appointed employees whose employment is not recognized in bio-metric system of the Corporation. As such, he has noticed that four employees have forged their employment on the establishment of the Bombay Municipal Corporation. The said complaint in detail narrates about the various documents forged by the said employees. The petitioner thereafter under his signature has also submitted default report on the above line to the Chief Engineer, Solid Waste Management about his lawful act of lodging criminal complaint and requested for the departmental enquiry also. He has further informed to the Chief Engineer that the concerned police officers are neither taking cognizance nor investigating the matter as could be inferred from the communication dated 28th February, 2019. He has again reminded about inaction on the part of the police authorities vide communication dated 17th May, 2019 in response to the letter of the Commissioner of Municipal Corporation issued on 25th April, 2019. It appears that as a sequel of above, the Assistant Commissioner has addressed a communication to the Senior Police Inspector of the concerned police station. The petitioner again reminded to the Senior Police Inspector, police station vide

communication dated 24th June, 2019 about the forging of the employment related document by the four employees and non registration of offence.

12. Apart from above, the conduct of the petitioner as reflected in the above referred communications addressed to the police authorities so also to his superiors sufficiently speaks of absence of *mens rea*. Rather his above noted conduct speaks of he being a whistle-blower. The above conduct of the petitioner of keeping consistent follow up with not only his superiors but also with the police authorities sufficiently establishes his bonafides.

13. It appears that the aforesaid consistent follow up on the part of the petitioner depicts that he had ever intention to have criminal investigation and departmental inquiry against the culprits. The Senior Police Inspector of the police station vide communication dated 22nd November, 2019 has noted that the four employees who have shown their employment based on forged document with the Corporation. During investigation, he has recorded statement of Smt. Pradnya Pawar – Junior Superintendent, Mr. Kisan Bandey - Administrative officer, Mr. Datta Gonbare and Smt. Nita Surve - Administrative officers and as such, he has found that the petitioner is not involved in the aforesaid commission of the offence.

14. Subsequent thereto, an offence came to be registered on 07.07.2020 punishable under Section 120B i.e. criminal conspiracy,

419, 420 i.e. cheating, 465, 467, 468 and 471 i.e. forgery and punishment for forgery.

15. In the said FIR, the petitioner is shown as one of the suspect. The said FIR came to be lodged on the statement of Mr. Prakash Sable, Assistant Chief Supervisor. The said complaint speaks of the complaint lodged by the present petitioner on 2nd February, 2019, however, it is mentioned that in the preliminary inquiry carried out by the department, the petitioner was found to be guilty and accordingly, the petitioner was suspended on 22nd November, 2019. Subsequent to the suspension of the petitioner, the charge was handed over to the said complainant.

16. The said complainant has specifically stated about the responsibility of the post of Assistant Chief Supervisor. He has also narrated about the four of the employees in the Solid Waste Management Section "G Ward" who have in connivance with the other employees of the Municipal Corporation forged their appointment orders and were shown on the employment of the Municipal Corporation.

17. He has also stated that Shri. Murgan Kukkuswami, Smt. Nita Surve and Smt. Pradnya Pawar were found to be involved in the aforesaid offence of cheating and forgery, whereas the present petitioner is shown to be negligent.

18. The negligence on the part of the petitioner is neither spelt out in the department proceedings nor in the criminal investigation/proceedings. Rather the communication referred to in the foregoing paragraphs of the petitioner reflects that the petitioner has made written complaint to the police officer of forgery in the matter of appointment and the default report submitted to the Chief Engineer sufficiently establishes that there is no material to infer any criminal negligent act on the part of the petitioner. Apart from above, such negligent act cannot be led to inferring the offence of Section 120B of IPC against the petitioner. If we consider the offence under Section 120B of IPC, which provides for punishment for criminal conspiracy, ingredients of said offence provides (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object as was agreed. As such, the essence of offence of criminal conspiracy is the unlawful combination. The petitioner cannot be said to be a part of the plan to forge the appointment orders in favour of the bogus employees. Apart from above, there is no *iota* of evidence to infer that there was meeting of minds in between the petitioner and other co-accused with an object of forging the appointment order and accommodating such bogus employees on the establishment of the Corporation. As such, it is to be held that the necessary ingredients of offence punishable under Section 120B

of the IPC cannot be inferred against the petitioner.

19. Section 419 and 420 of IPC provides for punishment for cheating by personation and cheating and dishonestly inducing delivery of the property. It is not the case of the prosecution that the petitioner has cheated by impersonation as contemplated under Section 419 of the IPC to be an offence or that the petitioner has cheated dishonestly inducing delivery of the property. Even the said ingredients also cannot be inferred against the petitioner. The prosecution has not come out with a case that the petitioner has committed forgery for the purpose of cheating or has forged documents.

20. Rather the conduct of the petitioner as reflected in exposing the very act of the other accused persons of forging the appointment order for securing employment with the Corporation demonstrates that he has no *mens rea* to commit offence in question or involved himself in such offence.

21. In this background, drawing support from the judgment of Apex Court in the matter of ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, particularly, clause 5 of paragraph 108, which reads thus :-

- “108.
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5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”

22. We are of the view that the case of the petitioner is squarely covered by the same. As such, the present petition stands allowed in terms of prayer clause (a).

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]