

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

Criminal Writ Petition No.4857 of 2022

Jaywant Pandurang Lawate

Age : 49 Yrs, Occ. Agriculture,

R/o Mahud,

Tal.Sangola, Dist.Solapur.

... Petitioner.

Versus

1. The State of Maharashtra

Through Police Inspector

Chandgad Police Station

Dist-Kolhapur

2. Prakash Vishnu Gurav

Age : 49 years, Occ: Agriculture

R/o Inam Kolindre

Tal-Chandgad Dist Kolhapur

3. Sudhir Nilkant Deshpande

Age : 70 years, Occ: Agriculture

R/o Chandgad

Tal. Chandgad, Dist. Kolhapur.

... Respondents.

Mr BA Lawate for petitioner.

Mr RM Pethe, APP for State.

Coram : R. N. Laddha, J.

Date : 3 November, 2023.

P.C. :

Heard.

2. The petitioner states that he works as a Gram-sevak at village Udenwadi and Kole, Taluka-Sangola, Solapur. The allegations against the petitioner is that he in connivance with other accused has created a false record and entered the names of accused No.3 and 4 to government land. Further, it is alleged that the petitioner fraudulently obtained signatures of the members of the Grampanchayat appended to the resolution.

3. The petitioner filed an application under Section 239 of the Code of Criminal Procedure, 1973 ('CrPC' for short) seeking discharge after the charge-sheet was filed vide CC No.27 of 2014. However, the learned Magistrate rejected the application for discharge on 4.2.2022, stating that the matter necessitates trial. The petitioner then preferred a revision being Criminal Revision Application No.6 of 2022 before the learned Additional Sessions Judge at Gadhinglanj, Kolhapur. However, the learned Additional Sessions Judge dismissed the revision application by judgment and order dated 7.7.2022. Aggrieved and dissatisfied by these orders, the petitioner has filed the present petition.

4. Learned Counsel for the petitioner submitted that the trial and revisionary Courts made a serious error that led to a

miscarriage of justice. He submitted that the lower Courts failed to consider that the petitioner is a public servant and that Section 197 CrPC requires sanction at the time of filing the charge-sheet.

5. The learned Additional Public Prosecutor, however, opposed the petitioner's discharge and submitted that there is a *prima facie* case against the petitioner. He stated that the allegations against the accused are grave and serious, which warrants a trial.

6. To invoke protection under Section 197 of the Code, the accused must claim that the act was done reasonably while performing their official duty. The acts complained of must be such that they cannot be separated from the discharge of official duty. If there was no reasonable connection between the acts and the performance of those duties, then the official status only furnishes the occasion or opportunity for the acts, and no sanction would be required.

7. In the present case, the allegations levelled against the petitioner/accused are *prima facie* cannot said to be the official act. The allegations require a trial to establish the facts, which cannot be done at this stage. Therefore, it is not

possible to grant any relief to the petitioner. However, the trial Court shall examine this question afresh during the course of the trial and deal with it in the judgment without being prejudiced by any observation in this order.

8. It is a settled principle in law that at the stage of framing of the charge, the Court has to consider whether there is sufficient ground to proceed against the accused. The Court is not required to assess the evidence and determine whether the materials produced are sufficient to convict the accused. If the Court is satisfied that a *prima facie* case has been made out, then a charge must be framed. At the stage of framing of charge, the enquiry must be limited to determining whether the facts emerging from the materials constitute the offence with which the accused can be charged. The Court may peruse the record for that limited purpose, but it is not required to marshal it with a view to deciding its reliability.

9. In view of the above, the petition fails and stands dismissed.

[R. N. Laddha, J.]