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

**CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1017 OF 2023**

Asha Arun Gawli ... Petitioner

**Vs.**

State of Maharashtra ...Respondent



Mr. E. A. Sasi with Tejas Shinde, for Petitioner.

Mr. Pradeep Gharat, Special Public Prosecutor with Mr. S. S. Ghag, APP for State-Respondent.

**CORAM:- N. J. JAMADAR, J.**

**DATED:- 11th MARCH, 2024**

**ORDER:-**

**1)** Heard Mr. Sasi, the learned Counsel for the petitioner and Mr. Gharat, the learned Special Public Prosecutor for the Respondent-State.

**2)** The petitioner takes exception to a judgment and order dated 7th September, 2022, passed by the learned Additional Sessions Judge in Criminal Revision Application No. 1173 of 2017, whereby the learned Additional Sessions Judge declined to interfere with an order dated 22nd August, 2017, passed by the learned Additional Chief Metropolitan Magistrate, 19th Court at

Esplanade, Mumbai in Case No. 805/PW/2012, rejecting an application for discharge preferred by the petitioner.

**3)** M/s. Globe Auto Electricals Ltd., was closed in the year 1981. The dues of 469 workers were outstanding. Those workers were purportedly affiliated with Akhil Bharatiya Kamgar Sena of which Arun Gawali, (Accused No.1), the husband of the applicant, was the President and the applicant was vice -President. The workers had purportedly executed a power of attorney in favour of Arun Gawali, the accused No. 1.

**4)** M/s. Neptune Constructions purchased the factory premises of M/s Globe Auto Electricals Ltd., and credited a sum of Rs.4 Crores in the account of Akhil Bharatiya Kamgar Sena for the discharge of the outstanding dues of all the workers. It transpired that the dues of only 137 legitimate workers were paid, though it was claimed that the dues of 326 workers were discharged. Arun Gawali (A1) and applicant (A2) had misappropriated a sum of Rs.1,77,87,661/- by withdrawing the amount from the said account by presenting 153 bearer cheques to which the applicant and accused No. 1 were signatories. Post completion of investigation, charge-sheet was lodged for the offences punishable under Sections 120B, 409, 465, 468, 420 and 471 of the Indian Penal Code, 1860.

**5)** An application for discharge preferred by the petitioner came to be dismissed by the learned Magistrate by an order dated 22nd August, 2017. Revision thereagainst preferred by the petitioner was also dismissed by the impugned order.

**6)** Mr. Sasi, the learned Counsel for the petitioner, submits that there is no material to show that the petitioner was a confederate in the conspiracy to defraud the workers. Without disputing the fact that the petitioner was a signatory to the 153 cheques under which the defrauded amount was allegedly withdrawn, Mr. Sasi submitted that the prosecution is enjoined to further establish that either the petitioner was a privy to the alleged conspiracy or beneficiary of the alleged fraud. Both the factors are, according to Mr. Sasi, conspicuously absent. Therefore, the learned Additional Sessions Judge as well as the learned Metropolitan Magistrate were in error in declining to discharge the petitioner.

**7)** As against this, Mr. Gharat, the learned Special Public Prosecutor stoutly resisted the prayers in the Petition. It was submitted that the material on record indicates that the petitioner was a signatory to 153 cheques. A sum of Rs.50,00,000/- was credited to the account of Shiv Shamboo Narayan Trust, which was subsequently withdrawn. Amounts were shown to have been paid to various persons who had no concern whatsoever with the purpose for which the amounts were to be utilised by Akhil Bharatiya Kamgar Sena. A sum of Rs.10,00,000/- was used for personal expenses. The petitioner being a signatory to the cheques, cannot wriggle out of the situation.

**8)** I find substance in the submission of the learned Special Public Prosecutor. Indubitably, the petitioner was both the office bearer as well as a signatory to the cheques by presenting which the amount credited to the account of Akhil Bharatiya Kamgar Sena was withdrawn and misappropriated. At this stage, prima facie, there is material to indicate that the workers to whom the said amount was to be paid, were defrauded. Being a signatory to the cheques under which the amount was withdrawn, the petitioner cannot extricate herself from the liability by asserting that accused No. 1 alone misappropriated the said amount.

**9)** The decision of the Supreme Court in the case of **Union of India (UOI) Vs. Prafulla Kumar Samal and Others**[1]**,** does not advance the cause of the petitioner. In my considered view, the facts of the case at hand would be covered by Clause (2) of the

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**1** AIR 1979 SC 366

enunciation in paragraph No. 10 of the said judgment. It reads as under:-

> "...(2). Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial... "

On the aforesaid touchstone, an order to frame charge and proceed with the trial pirma facie appears impeccable.

**10)** In any event, the question as to whether the petitioner was a privy to the offences or it was the accused No. 1 alone who perpetrated the fraud, would be a matter for trial. At this stage, it cannot be said that the charge against the petitioner is groundless. The learned Magistrate as well as the learned Sessions Judge have applied the correct test in negating the prayer for discharge. No interference is thus warranted in exercise of extraordinary writ jurisdiction.

**11)** The Petition therefore does not deserve to be entertained.

**12)** The Petition stands dismissed.

**[N. J. JAMADAR, J.]**