



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2582 OF 2023**

Gangadhar Mahajan Puple

... Petitioner

versus

The State of Maharashtra

... Respondent

Mr. Abhishek R.Avachat for Applicant.

Mrs. Geeta P. Mulekar, APP for State.

Mr. Kisan Shankar Rathod, PSI, Kothrud Police Station Pune City.

CORAM: N.J.JAMADAR, J.

DATE : 1 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition assails the legality, propriety and correctness of an order dated 20 March 2023 passed by the learned Additional Sessions Judge, Pune in Criminal Revision Application No.191 of 2021 preferred by the Petitioner whereby the learned Additional Sessions Judge was persuaded to dismiss the Revision Application by affirming the order dated 10 March 2021 passed by the learned Judicial Magistrate, First Class, in RCC No.2088 of 2008 rejecting the prayer of the Petitioner to discharge him under Section 238 of the Code of Criminal Procedure, 1973.
3. When the matter was listed before the Court on 7 October 2023, it was submitted on behalf of the Petitioner that the Petitioner is similarly circumstanced as the Rajendra Ganpat Motirale - Petitioner in Criminal Writ Petition No.1383 of 2020 and (accused No.10 in RCC No.2088 of 2008), which was allowed by this Court by an

order dated 21 July 2022.

4. After noting the said submission, this Court had recorded a prima facie view that the Petitioner was similarly circumstanced. Learned APP was granted time to take instructions to point out the difference in the role of the present Petitioner and Rajendra Ganpat Motirale, who was discharged by this Court by order dated 21 July 2022.

5. Learned APP fairly submitted that from the perusal of the report under Section 173 of the Code and the documents annexed with it, there does not seem to be much qualitative difference between the role attributed to the Petitioner and Rajendra Ganpat Motirale. Both of them were then posted as Sub-Registrars at different Registration Offices and the same set of accused had allegedly got executed forged and fabricated documents. The Petitioner was posted in the Registration Office at Haveli No.4 where allegedly 50 forged instruments pertaining to Amrut Runwal Multi Housing Pvt. Ltd. were executed and registered in breach of the prescribed procedure. Mr. Rajendra Motirale, Petitioner in WP No.1383 of 2020 and accused No.10, was posted at the Registration Office, Haveli No.19 where 40 such forged instruments were executed and registered.

6. I have also perused the order passed by this Court in WP No.1383 of 2020. This Court has recorded that there was no prima facie material to indicate that the Petitioner had entered into any criminal conspiracy for execution of the forged

documents with the co-accused. Even otherwise, in the facts of the case, sanction under Section 197(2) of the Code, was warranted as the act complained of was performed in discharge of the official duties. This Court had placed reliance on the decisions of the Supreme Court in the cases of **Indra Devi V/s. State of Rajasthan and Anr.**¹ and **D. Devaraja V/s. Owais Sabeer Hussain**².

7. The reasons which weighed with this Court in allowing WP No.1383 of 2020 and discharging co-accused Rajendra in RCC No.2088 of 2008 apply with equal force to the claim of the Petitioner as he is similarly circumstanced. In view of the above, the Petition deserves to be allowed.

8. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 20 March 2023 passed by the learned Additional Sessions Judge in Criminal Revision Application No.191 of 2021 and the order dated 10 March 2021 passed by the learned Judicial Magistrate, First Class, in RCC No.2088 of 2008 are quashed and set aside and the Petitioner is discharged from proceedings in RCC No.2088 of 2008, pending before the Court of Judicial Magistrate, First Class, Court No.1, Pune.

(N.J.JAMADAR, J.)

1 (2021) 8 SCC 768

2 (2020) 7 SCC 695