

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

CRIMINAL REVISION APPLICATION NO. 134 OF 2019

Shirish Ramchandra Yadav
Age-50 Year, Occ: Service
R/o: J/16, Swapnshilp Society,
Kothrud, Pune.

...Applicant

Versus

The State of Maharashtra
Through, Deccan Gymkhana Police Station,
Pune.

...Respondent

**WITH
CRIMINAL REVISION APPLICATION NO. 361 OF 2022**

The State of Maharashtra
through Office of Anti Corruption Bureau,
Deccan Gymkhana Police Station, Pune

...Applicant

Versus

1. Chandrasen Tulshiram Nagtilak
Accused No.18,
r/o 1402, Kasba Peth, Pune - 11.
2. Sitaram Chintu Kadu
Accused No.17
r/o. 4, Siddharth Classic, Survey No.6/4/2,
Kothrud Pune 38.
3. Shivaji Ramkrishna Kumavat
Accused No.7
r/o. Siddhi Society Karve Nagar, Pune.
4. Dattatray Bhanudas Tambare
Accused No.13
r/o. Survey No.33, Gajanan Nagar,
Rahatani Pune.

...Respondents

....

Mr. Shriram S. Kulkarni i/by Mr. Lakshyaved R. Odhekar a/w Mr. Shyam Chavan a/w Mr. Ajinkya Yadav, Advocate for the Applicant.

Mr. Satyavrat Joshi, Advocate for Respondent Nos. 1 to 4 in Revision Application No.361 of 2022.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM	: PRAKASH D. NAIK, J.
DATE OF RESERVING ORDER	: 30th SEPTEMBER, 2022
DATE OF PRONOUNCING ORDER	: 09th JANUARY, 2024

ORDER :

1. The applicant in Criminal Revision Application No.134 of 2019 has invoked the revisional jurisdiction of this Court under Section 397 of Code of Criminal Procedure (Cr.PC.) taking exception to the impugned order dated 29.11.2018 passed by learned Additional Sessions Judge, Pune rejecting the application for discharge preferred by the revision applicant under Section 227 of the Cr.PC. in Special Sessions Case No.33 of 2009. Whereas Criminal Revision Application No.361 of 2022 is preferred by the State of Maharashtra challenging the order dated 29.11.2018 passed by the learned Additional Sessions Judge, Pune allowing the application for discharge preferred by the Respondent Nos.1 to 4 in the said application in Special Sessions Case No.33 of 2009.

2. The case of the prosecution in nutshell is as under :

i) The land bearing Survey Nos. 143/1, 143/2, 143/3, 144/1, 144/2, 144/3 were reserved. Survey No.143/3 and 144/3 were belonging to Haridas Gangaji Parekh, Mrs. Bhagirathi Haridas Parekh and Mr. Kamlesh Haridas Parekh to the extent of 11,100 sq.mtrs.

ii) The said land was acquired and award in Land Acquisition Case No.283 was passed on 28.06.1979. The owners received compensation under protest.

iii) Land bearing Survey Nos.143/1, 143/2, 144/1, and 144/2 situated at Kothrud admeasuring 25,000 sq.mtrs. was owned by Prabhakar Krushnaji Bhide, Vishwanath Krushnaji Bhide and Smt. Heela Vishwanath Bhide. The said land was acquired and award was passed in Land Acquisition Case No.1367 on 16.06.1986 and 24.06.1986. The land holders received compensation under protest.

iv) The possession of land was handed over to Special Land Acquisition Officer and on the same day it was transferred to Pune Municipal Corporation.

v) Accused No.2 Subhash Kulkarni was working as Estate and TDR agent. He was acquainted with Shivaji Ramkrishna Kumavat

(Accused Nos.7). Shri. Kumavat was serving as Special Land Acquisition Officer No.16. Accused No.2 collected required information regarding land and their owners. Accused No.2 came to know that the persons from Bhide family were not available and Parekh family had shifted to Gujarat.

vi) In order to get benefit of TDR, Accused No.2 had conspired with Accused Nos.3 to 5 and others.

vii) Balaji Vitthal Hire was working with Accused No.2 Subhash Kulkarni. With the help of Accused No.5, Accused No.2 prepared Power of Attorney of original land owners i.e. Parekh and Bhide family in the name of Balaji Vitthal Hire. It was registered with Sub Registrar Haveli No.1 vide document Nos.5285/1990 and 5286/1990 dated 15.11.1990. Proposal for TDR was filed in which date of possession was shown as 05.04.1992 instead of 28.06.1979. Accused No.3 was knowing Accused No.2 and Accused No.3 was knowing Accused Nos.4 & 5. In Power of Attorney, the Address of Accused No.4 was shown which was the address of Accused No.3. Power of Attorney of Accused No.4 was taken by Accused No.3 to sell TDR. The document was registered with Sub-Registrar Haveli No.4 vide document No.1860 of 2005.

viii) Search Report was given by Accused No.1. Bogus and fabricated Power of Attorney was used for Correction Deed. Stamp Paper was purchased by Accused No.5. False and bogus documents were submitted for obtaining TDR. C.R. No.579 of 2009 was registered with Deccan Gymkhana Police Station, Pune for offences under Sections 420, 467, 468, 471, 119, 120-B, 464 & 201 of Indian Penal Code (IPC).

ix) Investigation proceeded. Charge-sheet was filed. Further investigation was conducted.

x) During further investigation it was revealed that Accused Shirish Ramchandra Yadav was working in Revenue Department since 2002 and he was deputed as Deputy Commissioner. Accused Deepak Bhalchandra Kulkarni was working as Assistant Engineer in Bhumi Prapan Section. Dattatray Bhanudas Tambare, Junior Engineer was working under Deepak Kulkarni.

xi) It was the duty of Shirish Yadav to see the record and to verify whether or not true and correct opinion is given. Application was made by Balaji Vitthal Hire. Without any authority accused Deepak Kulkarni accepted his application and sent it to the office of Special Land Acquisition Officer No.16 and sought information regarding acquisition.

xii) Shivaji Ramkrishna Kumavat supplied information that the possession of Survey No.143/3 and 144/4 of Kothrud was given on 05.04.1982. Accused Deepak Kulkarni, Dattatray Bhanudas Tambare, Shirish Ramchandra Yadav in collusion with other accused had concealed information and record and prepared false documents and inserted the same in the record. They issued fabricated opinion. Accused Kumavat issued certified copies by fabricating the date of possession receipt by concealing the original possession receipt. After due sanction, supplementary charge-sheet was filed for offences punishable under Sections 465, 467, 468, 471, 109, 120-B, 201 of IPC and Section 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act.

3. The Revision Applicant in Criminal Revision Application No.134 of 2019 preferred an application for discharge before the trial Court on 06.04.2010. It was contended that the provisions of the Prevention of Corruption Act are not applicable in the present case and there is no evidence against the applicant under the said provision. Sanction is illegal. There is no evidence to frame charge under any Sections of IPC. The allegations in supplementary charge-sheet are contrary to original charge-sheet. There is no element of criminality in submitting a note to the

superiors and requesting the superiors to peruse all concerned record including letter dated 31.07.2004 to Special Land Acquisition Officer No.16. The transaction of demanding TDR or additional FSI was not completed as it was not granted by Commissioner of Pune Municipal Corporation (PMC). The applicant is no way concerned with the crime. He had signed the document under bonafide belief while discharging his official duty. He was on deputation in service of PMC. The alleged forgery in the register of PMC is on 05.04.1982. The accused was not in service at that time. 'Vastupatrak' is the original register of PMC's land and property which was not in custody of accused or his department.

4. The application for discharge was opposed by the prosecution vide say dated 21.04.2010. In the say it was contended that the revision applicant is in revenue service of Government of Maharashtra since 2002. He was working as Deputy Commissioner, Land Acquisition and Management upto 21.05.2005. Deepak Bhalchandra Kulkarni was working as Assistant Engineer and Dattatray Bhanudas Tambare was working as Junior Engineer. It was the responsibility of the applicant to verify the document forwarded to him for signature and approval. The Possession of both the properties which was subject matter of claim TDR were in possession by the concerned department of

Municipal Corporation. Requisite entries regarding the possession are made in the possession registers. The entry with regards to the possession of land owned by Parekh was on Page Nos. 279 and 280 dated 28.06.1979 which was tampered by altering by making an entry to give an impression that possession was not transferred on that day and that the possession was given to 05.04.1982. The fabricated entry was made on Page Nos. 306 & 307 vide entry Nos. 1 & 2, by interpolating the same in entry Nos.1 & 2 to show as it is a genuine entry. The fabrication is done by Dattatray Tambare, Deepak Kulkarni and Shirish Kulkarni in connivance with each other. On 18.12.2003 false applications were submitted in the name of original owner Shri.P. K. Bhide, H.G. Parekh and others to Deputy Commissioner Land Acquisition and Management, PMC for the purpose of obtaining TDR. Without authority the Revision Applicant accepted the said applications in the registry of the office. On 28.04.2004 Accused Balaji Vitthal Hire had submitted the documents to Deputy Commissioner Land Acquisition and Management, PMC Pune regarding the property Survey Nos.143/1, 143/2 and 144/1-2. The documents included 7/12 extracts, measurements maps, possession receipts & awards etc. The documents were submitted with the application for claiming TDR. Although there was no authority to take action in respect to the

application or accepting the said application, Accused Deepak Kulkarni took the said application on record. Although the requisite information was available in his department and without verifying the same, accused Deepak Kulkarni called for the information from the concerned department. In respect to the said application, the Land Acquisition Officer No.16 Shri. Shivaji Kumavat had submitted false information that the property bearing Survey Nos.143/3 and 144/3 was being handed over on 05.04.1982. Proposal for TDR was submitted on 10.10.2004. While giving his opinion accused Deepak Bhalchandra Kulkarni Assistant Engineer and Dattatray Bhanudas Tambare, Junior Engineer and Public Servant Shirish Yadav (Revision Applicant) had acted in connivance with each other and by suppressing the requisite information deliberately misplaced the original record and took on record the fabricated documents on the basis of the false information given vide letter dated 31.07.2004. The revision applicant has written in his own handwriting the remarks that the Land Acquisition Officer No.16 showed verify letter dated 31.07.2004 and mislead the superiors. The accused have thereby committed the offences under Sections 467, 468, 471, 420, 119, 120-B, 109, 201 of IPC and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.

5. The learned Special Judge rejected the application for discharge vide order dated 24.11.2010. While rejecting the said application for discharge, the trial Court had observed that considering the evidence brought on record and the fact that the involvement of the accused is prima facie conspicuous, it will not be in the interest of justice and equity to discharge the accused at this stage, as there is prima facie case and evidence to frame charge against the present accused. The accused were directed to be present on the next date without fail for framing charge.

6. Order dated 24.11.2010 passed by the learned Special Judge rejecting the application for discharge was challenged by the revision applicant before this Court by preferring Criminal Revision Application No.4 of 2011. This Court vide order dated 12.09.2011 rejected the application by observing that at this stage of the matter, taking recourse to Section 397 or 401 of Cr.P.C. there could not be and should not be roving criticism as to the worth of statement or value of the letter written by the applicant. In the grounds, the applicant accepts that he he is signatory of the letter with two other accused in the said C.R. No.579 of 2005. It would be matter of appreciation as to what was the mindset of the accused applicant at the time of putting signature on the letter.

Considering the position he was holding, it cannot be said that he simply signed on the dotted line. The letter was to be considered as foundation by his superiors for releasing TDR concession. It was a chain of network in the corporation from lower rank of the municipal employees to few outsiders. The network was unearthed on the investigation and accused applicant is put in mesh. Considering the primary evidence available against the applicant accused, at this stage its credentials need not be dissected holding that there was no case against the applicant.

7. The revision applicant preferred another application for discharge before the trial Court which has been rejected vide order dated 29.11.2018.

8. Learned Advocate Mr. Kulkarni appearing for the revision applicant in Criminal Revision Application No.134 of 2019 submitted as under :

- i) Although the previous application for discharge has been rejected by the trial Court as well this Court there is change in circumstances to entertain the present application.
- ii) There is no legal bar to entertain the second application for discharge, in the event of change in circumstance to entertain such application.

iii) There is no evidence against the revision applicant to frame charge against him.

iv) The revision applicant is not named in the FIR. He was not arraigned as an accused in the charge-sheet. He was implicated subsequently in supplementary charge-sheet. There is no iota of evidence to show that the applicant has committed any offence or acted in connivance with the co-accused. At the most the acts attributed to the applicant could be administrative lapse for which the criminal intent which is requisite to constitute the offences cannot be applied. The applicant was on deputation to Pune Municipal Corporation from Revenue Department. He worked in the concerned department for stipulated period.

v) The remarks made by the applicant on the basis of which the applicant has been charge-sheeted, by itself does not indicate that he has committed any offence. The remarks were with riders. It was not a false and misleading information. The concerned persons were called upon to verify the aspects and then grant TDR.

vi) Similar contention as that of the applicant was

considered by this Court while adjudicating the application preferred by the co-accused Ravindra Thorat. He was working as 'Senior Legal Advisor'. He published the public notice and invited objections. There were no objections. He gave opinion to Pune Municipal Corporation that TDR could be awarded to Parekh, if compensation was not paid. It was contended on his behalf that he had specifically stated in his opinion that TDR would be available only if the compensation was not paid. He could not be said to be a person to facilitate the grant of TDR to the Parekhs. This Court vide order dated 20.12.2014 passed in Criminal Revision Application No.521 of 2013 accepted the contention of the said accused and held that the allegation made against the said accused were not substantiated by sufficient material to frame either of the charges against him. The case of the applicant is identical to the case of Ravindra Nivrutti Thorat. The order dated 20.12.2014 was challenged before the Apex Court by State of Maharashtra and Special Leave Petition preferred by the State was dismissed vide order dated 19.02.2016. Thus, the order passed by this Court was confirmed by the Apex Court.

vii) The co-accused Chandrasen Nagtilak, Sitaram Kadu, Shivaji Kumavat and Dattatray Tambare were discharged by the trial Court.

9. Mr. Kulkarni has relied upon the following decisions:

- i) **Simrikhia V/s. Dolley Mukherjee and Chhabi Mukherjee and Another¹.**
- ii) **S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla and Another².**

10. The revision applicant had preferred second application for discharge before the trial Court. The said application was rejected on the ground that the High Court had rejected the revision application preferred by the applicant vide order dated 12.09.2011. The trial Court however discharged the other accused by order dated 29.11.2018 on the ground that the said accused can be attributed having committed administrative lapses. The accused, who applied for discharge were not sanctioning authority to give sanction to TDR. They are not signatories of TDR . They are not named in FIR and charge-sheet. There was no material against them in original charge-sheet. Supplementary charge-sheet does not contain more than that the applicants were attached to the respective department but PMC

¹ (1990) 2 SCC 437

² (2007) 4 SCC 70

gave their opinion and to facilitate the applicant as to get TDR. There might be some administrative lapses in the working of the applicants as a public servant which discharging their public duty. It cannot be equated with misconduct within the meaning of Anti-Corruption Act. The applicant's case cannot be segregated from the case of the co-accused whose applications for discharge were allowed by the trial Court vide order dated 29.11.2018.

11. Learned A.P.P submitted that the revision applicant has played vital role in the crime. There is sufficient evidence against him to try him for the offences. He was acting in connivance with other accused. There was conspiracy by the accused to obtain TDR although the land owners had accepted the compensation amount in respect to acquisition of land. The case of the revision applicant and the co-accused Ravindra Thorat can be distinguished. Specific role has been attributed to the applicant. The previous application for discharge was rejected by the trial Court. The order challenging the rejection of discharge was confirmed by this Court vide order dated 12.09.2011. The applicant cannot be permitted to prefer application for discharge again after the previous order has attained finality. There is no change in circumstance. The accused cannot file repeated applications for discharge. It is not possible for this Court to review previous order passed by this Court.

12. The State of Maharashtra has challenged the order dated 29.11.2018 passed by the trial Court discharging accused Chandrasen Tulshiram Nagtilak, Sitaram Chintu Kadu, Shivaji Ramkrishna Kumavat and Dattatray Bhanudas Tambare by preferring Criminal Revision Application No.361 of 2022 on several grounds.

13. Learned A.P.P. Mr. Patil submitted that the learned Sessions Judge has committed an error in discharging the aforesaid accused. There was sufficient material to proceed against the accused. The Respondents had acted in connivance with each other. At the stage of framing of charge the Court is required to see that prima facie case is made out against the accused. This is not the stage to appreciate evidence or accept the defence of the accused. The learned Sessions Judge has committed an error in discharging the accused on the ground that their lapses were administrative in nature. The Court failed to take note of the fact that overt act has been attributed to all the accused and prosecution must be given an opportunity to prosecute the Respondents/accused for the alleged crime. The offences are of serious nature. The accused were public servants. The accused were involved in suppressing vital facts from supervisors. All of

them were acting in concert for claiming the TDR benefit. The accused knowingly concealed the facts and prepared false and bogus record to help the other accused. There is strong documentary evidence and oral evidence against the Respondents. The learned Sessions Judge failed to appreciate the evidence on record. The accused No.2 Shivaji Kumavat had replaced the original possession receipts of land owners. Shri. Kumavat issued bogus letter giving false information about compensation and false date of possession of land of Shri.Parekh. Accused Dattatray Bhanudas Tambare was working as Junior Engineer, Land Acquisition and Management Department of Municipal Corporation at Pune from 20.02.2003 to 12.05.2005. His duty was to prepare the report by verifying the records available in the office and to submit the same to his superior officers. The possession register is in his custody. The record of the date of possession and compensation paid to the owners of the land acquired for Municipal Corporation is in his office. Sitaram Chintu Kadu is the Maintenance Surveyor. It is his responsibility to check endorsement mentioned in entry book of boundaries. He has willfully avoided to do his duty. Accused Chandrasen Tulshiram Nagtilak was working as Junior Engineer in Land and Estate Department of Municipal Corporation, Pune from July 2004 to June 2007. His duty was to

check whether the report sent by head Maintenance Surveyor is prepared correctly by verifying the records available in his office and to submit the same to his superior officers by personally checking the records which was willfully avoided by him.

14. Learned Advocate Mr. Joshi appearing for the Respondents submitted that there is no infirmity in the impugned order. The trial Court has rightly discharged the accused. The role attributed to the public servants was in the nature of administrative lapses for which criminal intent cannot be attributed. They were not the beneficiaries of the TDR. They were not sanctioning authorities. They were impleaded on the inferences without any authority. The charge cannot be framed mechanically. If there is no evidence to proceed against the accused, the Court was entitled to exercise the powers under Section 227 of Cr.PC. and discharge the accused. The learned Sessions Judge has passed the well reasoned order which does not require interference. The Respondents have not played any role in commission of crime. The Respondent No.2 has expired during pendency of application and case against him stands abated. There is no evidence to charge the respondents for the alleged offences. The Respondent No.4 Dattatray Tambare is a joint signatory along with others to letter

dated 06.12.2004. The documents does not attributed any malafide to him. No overt act is attributed to Respondent Nos.1 & 2.

15. Mr. Joshi has relied upon the following decisions:

- i) **Kanchan Kumar V/s. State of Bihar**³.
- ii) **Manohar Ganpatrao Kapsikar V/s. State of Maharashtra**⁴.

16. The FIR was registered on 10.10.2005 for offences under Sections 420, 467, 468, 471, r/w Section 34 of IPC. At the time of lodging FIR it was alleged that Prabhakar Bhide, Haridas Parekh, Balaji Vitthal Hire had acted in connivance with each other and although the property situated at Kothrud bearing Survey No.143/1, 143/2, 144/1+2, 143/3, 144/3 was acquired and compensation was parted to the land owners, proposal was prepared by providing false information for claiming TDR in respect to the said property, by preparing fabricated document in the nature of Power of Attorney given to Shri. Balaji Hire for submitting the proposal. Investigation proceeded, charge-sheet was filed. Further investigation was conducted. Supplementary charge-sheet was filed. The revision applicant in Criminal Revision Applicant No.134 of 2019 as well as the Respondents in Criminal

³ 2022 SCC OnLine SC 1222

⁴ 2015 ALL MR (Cri) 2513

Revision Application No.361 of 2022 were charge-sheeted. Charge-sheet contains statement of witnesses and the documents relied upon by the prosecution. Respondent Nos.1 to 4 in Criminal Revision Application No.361 of 2022 and applicant in Criminal Revision Application No.134 of 2019 were working in Pune Municipal Corporation. Apart from the provision of IPC, the penal provision under the Prevention of Corruption Act were invoked against the accused.

17. Applicant Shirish Ramchandra Yadav had moved an application for discharge before the trial Court. The application was rejected vide order dated 24.11.2010. While adjudicating the said application similar submissions which are advanced by the revision applicant before this Court were made before the trial Court seeking discharge. The learned Judge while rejecting the application had observed that involvement of the revision applicant is prima facie case is conspicuous and it will not be in the interest of justice and equity to discharge him. The case was fixed for framing charge. The order dated 24.11.2010 reflects that the allegations against the accused are not only under the provisions of IPC but also under the Prevention of Corruption Act. Whether the act of the accused as alleged comes within the ambit of criminal

misconduct or not will be a question to be decided on merits of the case. Prima facie allegations show that the accused was Deputy Commissioner of Land Acquisition in Pune Municipal Corporation and it was his duty to carefully verify the change made in the date of possession. It is pertinent to note that the sanction was accorded to prosecute him. The trial Court had observed that the evidence of conspiracy is always a secret evidence which can be appreciated only on the circumstances on record and unless all the circumstances are considered together and the chain is established it may not be for the prosecution to prove the charge and therefore for the said purpose recording of evidence will be necessary. It was the paramount duty of the applicant to check all the documents and the contents therein including the date of possession, which were material for grant of compensation. It was necessary to verify that the amount was accepted or not and whether the transaction of payment of compensation and acquisition was completed. The trial Court considered voluminous documents and gave a finding that it is the case whether the action of the accused as to whether he had committed offence and whether he is entitled to be convicted, is a matter to be decided on merits and not at this stage. There is prima facie evidence and allegations to show that the accused has a role in referring the disputed matter to his superior

for necessary orders, which if passed, would have benefited the accused persons and therefore it is necessary to consider the case of the accused on merits. The order dated 24.11.2010 was challenged before this Court. By order dated 12.09.2011, the revision application preferred by the applicant Shirish Yadav was dismissed by this Court. The contention of the Revision applicant was that no major role could be attributed to him inviting infraction of Sections 420, 467, 468, 471, 120-B, 201 and 465 of IPC. The revision applicant was not the authority taking possession in respect of grant of transfer of development rights. This Court had observed that there could not be and should not be roving criticism as to the worth of statement or value of the letter written by the applicant. The applicant has urged that his prayer for discharge be reconsidered in view of discharge of co-accused. It is not possible to accept the contention. Apart from the fact that there cannot be review of the earlier decision on the ground that the revision application preferred by the co-accused Ravindra Thorat was allowed by this Court and that the said order was confirmed by the apex Court, the case of Ravindra Thorat can be distinguished from that of the revision applicant. It is also not possible to accept that there is no prima facie evidence to proceed against the revision applicant. The exercise of appreciating the ground for discharge

urged by the applicant was already done by the trial Court as well as this Court. The revision applicant cannot be allowed to make repeated applications for discharge. At the stage of discharge, the Court is required to see whether prima facie case is made out to proceed against the accused while rejecting the application for discharge preferred by the revision applicant vide order dated 24.11.2010. The contention of the applicant is that the letter signed by the applicant was containing riders which is similar to the opinion expressed by co-accused Ravindra Thorat cannot be accepted. Considering the position of the applicant and the duties expected from him and the charge levelled against him, the grounds urged by the applicant deserves to be rejected.

18. Mr. Kulkarni has relied upon the decision of the apex Court in the case of **S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla and Another (supra)** to contend that there is no bar for entertaining the present revision application on the ground that the previous application was turned down by this Court. The factual matrix of the aforesaid decision would indicate that the Respondent No.1 preferred an application for discharge which was rejected by the trial Court. Revision application was also dismissed by the Sessions Judge. Application under Section 482 of Code of Criminal

Procedure was permitted to be withdrawn by the High Court with leave granted to avail remedies if any available in law. The trial Court was directed to expeditiously dispose of the matter. Application for quashing the proceedings was filed. The High Court held that no case has been made out for issuance of summon against Respondent No.1 as the allegations does not satisfy the requirements of law as contained in Section 141 of the Negotiable Instruments Act. The order of the High Court was challenged before the Apex Court. The contention of the Appellant before the Apex Court was that the second application preferred by the Respondent No.1 was not maintainable. The Apex Court observed that such a question had not been raised before the High Court and even otherwise High Court was not denuded from exercising its inherent jurisdiction in a matter of this nature. The apex Court noted the previous order passed by the High Court and observed that the High Court had granted liberty to Respondent No.1 to agitate the matter once again. The Respondent No.1 merely took recourse thereto. The decision is based on the facts of the said case. The High Court had granted liberty to the Respondents therein to resort to appropriate remedy. In the present case the application has been decided by this Court on merits and I do not find any change in circumstance as contended by the Revision

Applicant. It is not possible to substitute the view expressed by this Court vide order dated 12.09.2011 by considering the submission of learned counsel for the revision applicant and the order dated 20.12.2014 passed by this Court in the revision application preferred by the co-accused Ravindra Thorat. There is prima facie material to proceed against the revision applicant and no case is made out to discharge the applicant from the prosecution.

19. In another decision relied upon by Mr. Kulkarni in the case of **Simrikhia V/s. Dolley Mukherjee and Chhabi Mukherjee and Another** (supra) the legality of the order of the High Court passed on an application under Section 482 of Cr.P.C. was challenged before the Apex Court in appeal. The contention before the Apex Court was that the second application under Section 482 of Cr.P.C. which was entertained by the High Court was not maintainable. The exercise of power under Section 482 on second application by the same party on the same ground virtually amounts to review of earlier order and is contrary to the spirit of Section 362 of Cr.P.C. and the High Court was therefore, clearly in error in having quashed the proceedings by adopting that course. The Apex Court accepted the submissions it was observed that inherent power under Section 482 is initiated to prevent the abuse of process of the

Court or to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect of a review which is expressly barred under Section 362.

20. I do not find any reason to take different view of the matter then that expressed in order dated 12.09.2011 passed by this Court. In the light of the prosecution case and the material available against the revision applicant, the application is devoid of merits and deserves to be dismissed.

21. Vide order dated 29.11.2018, the learned Sessions Judge allowed the application for discharge preferred by

Respondent Nos.1 to 4 in Criminal Revision Application No.361 of 2022. While allowing the said application it was observed that the said Respondent do not have any role in preparation of Power of Attorney. On receipt of application of TDR from Satish Kulkarni and Shri. Gore, the concerned Authority was required to call the report from concerned department. Accordingly the accused being a public servant in respective departments have given their reports/ opinion with a rider that TDR may be granted. They had not given clear opinion to issue TDR in favour of the applicants. They have not prepared bogus or fabricated possession receipts nor they have altered in the dates of possession receipts. They are not sanctioning authority to grant sanction for TDR. They are not signatories of TDR. They were not figured in FIR and in original charge-sheet. There was no material against them in original charge-sheet. Supplementary charge-sheet does not contain more than that the applicants were attached to their respective departments of Pune Municipal Corporation and gave their opinion as to facilitate to the applicants to get TDR. Except this, there is nothing more than that against the said accused. There might be some administrative lapses in the working of the accused as public servants while discharging their public duty. It cannot be equated with misconduct within the meaning of Anti Corruption Act.

Sanctioning authority had overruled the suggested riders and granted TDR which were later on cancelled. There are no allegations that they had received any valuable things or pecuniary advantages by abusing their possession as a public servant. There is no sufficient material to frame the charge against the said accused and they are liable to be discharged.

22. The complainant in this case is Assistant Engineer, Pune Municipal Corporation. The Respondent No.2 was working as Special Land Acquisition Officer. The Respondent No.4 was working as junior engineer. Respondent Nos.1 & 2 were also working in Pune Municipal Corporation. It is reported that the Respondent No.2 has expired during pendency of the revision application.

23. The prosecution case is that the proposal was submitted for TDR in respect to Survey No.143/1, 143/2, 144/1+2, 143/3, 144/3 situated at Kothrud. The land was acquired for public garden. Proposal was submitted for approval to Municipal Corporation after opinion of various divisions. The Deputy Commissioner, Pune Municipal Corporation, Land Acquisition, Shri. Suraj Mandhare found irregularities in the proposal for TDR. It was brought to the notice of the

Commissioner of Corporation. Shri. Mandhare verified the documents and submitted the report to Commissioner on 08.10.2005. Instructions were issued to stay grant of TDR and Criminal action against the concerned persons. The property was reserved for garden. Proposal for acquisition was submitted to District Collector. Property was acquired. Possession was taken by Corporation. Compensation amount was deposited with Government by Corporation. In January 2004, Shri. Bhide and Shri. Parekh demanded TDR. Land Acquisition Department sought enquiry from Special Land Acquisition Officer whether the land owner received compensation, there was no response. Again inquiry was made. Land Acquisition Officer No.16 vide letter dated 31.07.2004 informed that, compensation is not collected by Land owners. Date of possession are of 1982 and 1986. Exact date can be revealed on verification of documents. On the basis of Power of Attorney given by land owner Shri. Balaji Hire submitted application for TDR in lieu of compensation. Opinion was sought from Legal Adviser and other departments. Application for TDR was forwarded. TDR was issued. On inquiry it was found that compensation was received by the land owners. Possession of land of Parekh was taken before 30.05.1981. It was found that there were alterations in document relating to property with Special

Land Acquisition No.16. Search report was called from Advocate S.G. Shilwant. He gave opinion about it. Accused Subhash Kulkarni was acquainted with Shivaji Kumavat (Respondent No.3). Accused Subhash Kulkarni collected information from Shri. Kumavat. It was revealed that Bhide was dead and Parekh had shifted to Gujarat. If possession is taken before 30.09.1993 within 12 years and compensation is not accepted, the owner is entitled for TDR. It is alleged that to take the benefit of the rule, Accused No.1 conspired with all the other accused. He had meetings with them. Balaji Hire is the employee of Accused No.1 Subhash Kulkarni. Power of Attorney was given to Shri. Balaji Hire. It was prepared & registered. The date of award was changed. The prosecution has attributed role to Respondent Nos.3 to 4 in Criminal Revision Application No.361 of 2022 and the applicant in Criminal Revision Application No.134 of 2019. The charge-sheet indicate that the applicant in Criminal Revision Application No.134 of 2019 was employee in the revenue department of Government of Maharashtra. He was on deputation with Pune Municipal Corporation as Deputy Commissioner. He was in the department of Land Acquisition. Accused Deepak Kulkarni was working in his jurisdiction as Assistant Engineer and Accused Dattatray Tambare was working as Junior Engineer. It was the responsibility of the

aforesaid applicant to verify the report submitted by his subordinates and gave his opinion by ascertaining the facts. The entry regarding the land owned by Shri. Parekh was on Page Nos.279 and 280 of the possession register dated 28.06.1979. There was alteration in the record to show that possession was not taken on the aforesaid date and it was shown that the possession was taken on 05.04.1982 by false entry in Page Nos.306 & 307 which was interpolated in Sr. No.1 & 2 to indicate that it is genuine entry. The said alterations are made by the accused Dattatray Tambare, Deepak Kulkarni and Shirish Kulkarni by conspiring with each other and to help other accused to commit the act for wrongful gain. Thus, there is sufficient evidence on record prima facie to frame charges against the respondent Nos.3 & 4 in Criminal Revision Application No.361 of 2022 and the applicant in Criminal Revision Application No.134 of 2019. However, I do not find any prima facie material to proceed against the Respondent Nos.1 & 2 in Criminal Revision Application No.361 of 2022.

24. At the stage of framing of charge, the trial Court is not expected to hold a roving inquiry and to appreciate the evidence. The Court is required to consider whether prima facie case is made out to proceed against the accused. The reasons assigned by the trial Court for discharging Respondent Nos.3 & 4 are erroneous. It

is true that the case against Nos.3 would abate as he has passed away. The impugned order however is contrary to material on record qua Respondent Nos.3 & 4. No interference is called for in discharge of Respondent No.1- Chandrasen Tulshiram Nagtilak and Sitaram Chintu Kadu. Hence I pass the following order.

ORDER

- i) Criminal Revision Application No.134 of 2019 stands dismissed.
- ii) Criminal Revision Application No.361 of 2022 is partly allowed.
- iii) Impugned order dated 29.11.2018 passed by learned Additional Sessions Judge, Pune Court, discharging Respondent Nos.3 & 4 is set aside. The prayer for setting aside the impugned order dated 29.11.2018 passed by learned Sessions Judge, Pune discharging the Respondent Nos.1 & 2 in Criminal Revision Application No.361 of 2022 stands rejected.
- iv) Both Revision Applications are disposed off accordingly.

(PRAKASH D. NAIK, J.)