

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

CRIMINAL REVISION APPLICATION NO.29 OF 2024

Yashwantrao Sadashiv Deshmukh

Age : about 51 Years, Occu. : Service,

Residing at : 201, Krupa Heights

Co-operative Housing Society,

Ashtavinayak Nagar, New Link Road, ...Applicant

Borivali, Mumbai : 400 032. (Original Accused No.5)

Versus

1. **The State of Maharashtra**

(At the instance of Sr.Inspector
of Police, Kasturba Marg Police Station) ...Respondent No.1

2. **Deepak Bhaskar Khambit**

Age : about 51 Years, Occu. : Service,

Residing at : A – 1902, Aquaria Grande,

Devidas Lane, Near St. Lawrence High ...Respondent No.2

School, Borivali (West), Mumbai : 400103. (First Informant)

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WITH

CRIMINAL REVISION APPLICATION (ST) NO.6 OF 2024

Shrikrishna Sadashiv Mohite

Age : 48 Years, Occu. : Govt. Service,

Residing at : B/1005, Jangid Heights,

Ghodbunder Road, Kapurbawadi, ...Applicant

Thane (W) – 400 067. (Original Accused No.4)

Versus

1. **The State of Maharashtra**

(At the instance of Kasturba Marg
Police Station) ...Respondent No.1

2. **Deepak Bhaskar Khambit**

Age : 51 Years, Occu. : Service,

Residing at : A – 1902, Aquaria Grande,

Devidas Lane, Near St. Lawrence High ...**Respondent No.2**

School, Borivali (West), Mumbai : 400103. (**First Informant**)

Mr.Raja Thakare–Senior Advocate i/b. Mr.Siddharth Jagushte:-	Advocate for Applicant in Revision Application No.29 of 2024.
Mr.Ashok Mundargi–Senior Advocate a/w Mr.Sandeep S. Salunkhe, Mr.Chaitanya Mulwakar, Mr.Shubhak Paygude and Mr.Rushikesh K. Gaikwad:-	Advocates for Applicant in Revision Application (ST) No.6 of 2024.
Mr.Ashok Gawai:-	APP for Respondent No.1–State.
Advocates for Respondent No.2-First Informant. Mr.Laxmikant Shukla (Through V.C.) a/w Mr.Chandan J. Jaiswal and Ms.Artri R. Dharmase:-	Advocates for Respondent No.2-First Informant.

CORAM : S. M. MODAK, J.

DATED : 21st AUGUST 2024

P. C. :

1. The issue involved in both these Revision Applications is, whether the Applicants may be asked to face the trial. They claim that there is no sufficient material against them to frame a charge. The Court of Additional Sessions Judge as per two separate orders dated

26th October 2023, has rejected their prayer for discharge. That is why, both of them have come in before this Court in Revision.

2. I have extensively heard learned Senior Advocate Shri.Mundargi for Applicant–Shrikrishna Mohite–Accused No.4 and learned Senior Advocate Shri.Thakare for Applicant–Yashwantrao Deshmukh–Accused No.5. I have also heard learned APP Shri.Gawai for Respondent No.1–State and learned Advocate Shri.Shukla for Respondent No.2–First Informant.

3. It is true that the charge-sheet consists of thousand of pages. The respective Counsels have filed the relevant documents on record. Even, learned APP and Mr.Shukla have filed the relevant documents for deciding their Revision Applications on record. With their assistance, I have perused them.

About FIR

4. There is an offence registered with Kasturba Marg Police Station, Mumbai on 29th September 2021. It is in respect of an incident of firing. The First-Informant – Deepak Khambit is working as an Executive Engineer in Mira Bhayander Municipal Corporation. On the date of incident, at about 17.40 hours, he was returning home in his car. When he reached near the over bridge of Sanjay Gandhi National

Park at about 18.10 hours, one person who was pillion rider fired towards him. The glass of the car was broken. Somehow, he could escape. He lodged complaint against two unknown persons. It was registered for the offences punishable under Sections 324, 307 read with 34 of the Indian Penal Code, 1860 ("IPC"), Sections 3, read with 25, 27 of the Arms Act as well as under Sections 37(1)(A) punishable under Section 135 of the Maharashtra Police Act, 1951. These two Applicants came to be arrested on 6th October 2021. Earlier to their arrest, the Police have arrested the Accused Nos.1, 2 and 3. Admittedly, these two Applicants were not portrayed as assailants but the prosecution claims that they have hatched the conspiracy with other Accused to eliminate the First-Informant.

Background

5. Both these two Applicants are working in the same Corporation Mira Bhayandar Municipal Corporation as Junior Engineers. They were having a grudge against the First-Informant. He is a member of the promotion committee. These two Applicants along with some Junior Engineers were not promoted. The First-Informant has also alleged other incidents of grudge against the Applicant No.4 – Mohite. It is in respect of sanction of certain proposals by the said Corporation

about terms of building permission. Applicant – Mohite has alleged, First-Informant included those terms for his benefit. Such reference finds place in the letter written by the First-Informant dated 13th December 2021 to the Senior Police Inspector – Kasturba Police Station. Against Accused No.3 – Raju Vishwakarma, a separate motive is alleged. Accused No.3 is an activist as per the Right to Information Act. He was allotted a contract by the Corporation for supply of food during COVID. For certain duration, it was renewed but subsequently, it was cancelled. According to the prosecution, that is why, the Accused No.3 was annoyed with the First-Informant.

The dispute about seniority

- (a) There are two aspects. **First, not giving promotion to the present two Applicants and few others.** In respect of this issue, they have filed a **Writ Petition No.12913 of 2016.** Applicant – Deshmukh is the Petitioner No.1 and Applicant – Mohite is the Petitioner No.4. It was filed by in all 13 Petitioners. **A Division Bench of this Court disposed of this Petition on 6th March 2017.** There was some issue about recovery of the arrears on account of not passing the Departmental Examination. The Division Bench granted a liberty to the Petitioners to appear for the

Examination and recovery can be made only if they will fail to pass the Examination.

- (b) The Applicant – Mohite is already given a benefit of accelerated promotion as per the order dated 14th February 2018 issued by the Deputy Municipal Commissioner. In the list of seniority published for the duration 1st January 2020 till 31st December 2020, the Applicant – Deshmukh is at Sr.No.7. Whereas, the Applicant–Mohite is at Sr.No.9.
- (c) According to both the learned Senior Advocates, the Division Bench has granted them a liberty. Hence, the allegation of grudge for not giving them promotion is without any basis. The Police have recorded the statements of the Petitioners who have filed the Writ Petition. The names of those persons are as follows:-

(i)	Yatin V. Jadhav	(ii)	Rajendra Pangal
(iii)	Deepak Jadhav	(iv)	Uttam Randive
(v)	Sachin Patil	(vi)	Bhupesh Kakade
(vii)	Vikas Parab	(viii)	Chetan Mhatre
(ix)	Arvind Patil		

They have not said anything about any grudge with the First-Informant.

(d) **There is one more issue about the grievance of seniority.**

There are certain Junior Engineers who were appointed on contract basis. Their service was not considered while promoting them to the post of Engineers. That is why, certain persons have approached the Industrial Court. They were successful. Their names are as follows:-

(i)	Nitin Mukne	(ii)	Sharad Nanegaonkar
(iii)	Hemchandra Kini	(iv)	Kiran Rathod

Their statements are recorded.

(e) They were also promoted to the post of Deputy Engineer as per the Resolution dated 21st December 2006. They claim that the present two Applicants were alleging that all these persons have joined hands with the First-Informant and that is why, they got promotion. There is a copy of joint representation made by several Junior Engineers which include present two Applicants also. It is dated 27th May 2021 addressed to the Deputy Municipal Commissioner. They have made a grievance about not giving them promotion.

(f) According to both the learned Senior Advocates, in this

representation, there is no reference of the allegations made against them that they have made imputation against the First-Informant being favourable to certain persons for giving them promotion. They are right.

Materials collected during investigation

- (a) When Accused No.1 – Amit Sinha was arrested, he is arrayed as an assailant. His personal search was taken on 4th October 2021. Apart from the other articles, two chits were found with him. **On one chit**, there is a reference of Registration No.MH-04-EP-0450 (White Dzire – Car of the First-Informant) and there is further reference of **Swift Dzire Car No.MH-02-DS-2114**. (the prosecution claims that this car was used by Accused No.4–Mohite by way of exchange from the garage dealer–Hasan Patel).
- (b) There is a statement of **Hasan Patel** dated 15th December 2021. The Accused No.4 has delivered his Volkswagen Polo Car to this garage dealer and for temporary use, the said Patel has allowed the Accused No.4 to use Swift Dzire Car No.MH-02-DS-2114. He used this car for the period 5th July 2021 upto 2nd September 2021. (Whereas, the date of

incident is 29th September 2021).

- (c) Two memorandum statements are relied upon by the prosecution. One is of **Accused No.4 – Mohite** dated 10th October 2021 wherein he has shown readiness to show the place wherein the motorcar MH-04-KA-3267 is parked. (This is the Volkswagen Polo Car which belongs to the Accused No.4). This car was also seized.
- (d) Second statement is of **Accused No.3 – Raju Vishwakarma** dated 8th October 2021 wherein he has shown readiness to show the place wherein car No.MH-04-JV-6656 was parked by him. It was at the time when the driver Pradeep Pathak and employee Durgavati Yadav accompanied him and at that time, Rs.10,00,000/- (Rupees Ten Lakh Only) was handed over to him by Accused – Mohite.
- (e) In this statement, the maker Raju Vishwakarma has referred about hatching a plan with the assistance of the present two Applicants.
- (f) “Both, above referred memorandum statements have no evidentiary value for the reason that there is no recovery as contemplated under Section 27 of the Evidence Act”, is the

submission. Mr.Mundargi relied upon the observations in case of *Ranjan Shaam Mawar v/s. The State of Maharashtra*¹ wherein some reference in a memorandum statement of co-accused was held not admissible. Learned Senior Advocate Shri.Thakare relied upon the observations in *Venkatesh alias Chandra and Another v/s. State of Karnataka*² (Para No.21 to 24). It is in respect of which portion is admissible under Section 27 of Evidence Act.

- (g) There is a statement of Durgavati Yadav dated 8th October 2021 recorded by the Police under Section 161 of the Code and her statement is recorded under Section 164 is dated 11th October 2021.
- (h) According to learned Senior Advocate Shri.Mundargi, there is variance in between both these statements. In a statement recorded under Section 164 of the Code, the witness has not said about meeting Accused No.4–Mohite either in the office of the Corporation or the incident of handing over a bag by Accused No.4 to Accused No.3–Raju Vishwakarma.
- (i) Whereas, according to learned APP and learned Advocate

¹ Bail Application No.3880 of 2021 : 11th October 2022 : Bombay High Court

² 2022 SCC OnLine SC 765

Shri.Shukla, at the time of framing of charge, the issue whether the averments in statement recorded under Section 164, whether it corroborates with the statement under Section 161 of the Code cannot be gone into.

The evidence of mobile calls

6. The Police have collected the Call Detail Reports (“CDRs”) of the arrested Accused persons. They have prepared one chart. The details are as follows:-

- (a) The call in between the Accused No.3 – Raju Vishwakarama and Accused No.4 – Shrikrishna Mohite. They are 35 in numbers.
- (b) The calls in between the Accused No.4 - Shrikrishna Mohite and Accused No.5 – Yashwantrao Deshmukh. They are 114 in numbers.

7. According to learned Senior Advocates Shri.Mundargi and Shri.Thakare, these calls have got only relevancy of communication and except that no inference can be drawn even at this stage. Mr.Thakare submitted that there are no calls in between the Accused No.3 – Raju and his client. They relied upon the following judgments:-

- (i) ***Venkatesh alias Chandra and Another v/s. State of Karnataka***³

³ 2022 SCC OnLine SC 765

(ii) *Mohammed Rashid Kunju v/s. State of Maharashtra & Another*⁴

(iii) *Vikrant Singh v/s. State of Punjab*⁵

8. On this background, it will be material to consider the ratios laid down in various judgments relied upon by both the sides.

Judgments cited

9. Mr.Shukla relied upon the following judgments:-

(i) *Captain Manjit Singh Viridi (Retd.) Hussain Mohammed Shattaf & Ors.*⁶

(ii) *State of Rajasthan v/s. Ashok Kumar Kashyap*⁷

(iii) *Sheoraj Singh Ahlawat and Others v/s. State of Uttar Pradesh and Another*⁸

(iv) *Sanghi Brothers (Indore) Private Limited v/s. Sanjay Choudhary and Others*⁹

(v) *Asim Shariff v/s. National Investigation Agency*¹⁰

Conclusion

10. I have read those judgments wherein the High Court while allowing the discharge Application has made a reference of the statement of few of the persons whereas, other statements are not

4 [2015] 0 Supreme (Bom) 581

5 2022 SCC OnLine P&H 3584

6 2023 AIR (SC) 2480

7 2021 (4) SCR 158

8 2012 AIR SCW 6171

9 2008 SCC 10 681

10 2019 SCC 7 148

referred. That is why, the Supreme Court has set aside the order and observed that entire material needs to be considered. Whereas, in case of ***Ashok Kumar Kashyap*** (cited supra), there was a case under the provisions of the Prevention of Corruption Act. In Para No.9.1, the observations in case of ***P. Vijayan v/s. State of Kerana***¹¹ were reproduced.

“If, the material collected during investigation shows suspicious circumstances against the Accused to frame a charge, then the trial Court is justified in framing a charge. It was not expected to enter into the pros and cons of the matter or enter into weighing and balancing of the evidence and probabilities.”

11. In case of ***Sheoraj Singh Ahlawat*** (supra), the principles for deciding a discharge Application laid down in case of ***Union of India v/s. Prafulla Kumar Samal***¹² were reproduced. Whereas, in case of ***Sanghi Brothers*** (supra), the test of strong suspicion was again reiterated. In case of ***Asim Shariff*** (supra), the observations in case of ***Sajjan Kumar v/s. Central Bureau of Investigation***¹³ were reproduced and again, the test of grave suspicion was reiterated. For easy reference, learned Advocate Shri.Shukla also relied upon the provisions of Section

¹¹ (2010) 2 SCC 398

¹² (1979) 3 SCC 4

¹³ (2010) 9 SCC 368

10 of Evidence Act. *If a thing is done by conspirator in pursuance to the conspiracy, it is a relevant fact.*

12. There cannot be doubt about the principles laid down in the above referred judgments. It is true that the test for arriving at a guilt of the Accused is different from the test for ascertaining the sufficiency of materials. The materials collected during investigation are to be considered as a *bonafide* materials. It is true that they have to be considered as it is. Whether one material corroborates with another material, cannot be gone into at the time of framing of charge.

13. Learned trial Judge in the impugned order, has observed:-

“Role of Accused No.5 is limited but have not considered the common grudge of Applicant of Accused Nos.5 and 4 and the fact that there is CDR showing Accused no.5 was in constant touch with Accused No.4 and Accused No.4 was in touch with Accused No.3 which prima facie discloses the involvement of Accused Nos.4 and 5.”

14. If, the materials referred before me are considered, the witness Durgavati Yadav who is an employee of the Accused No.3 has said about accompanying the employer and Accused No.1 was the driver. She has stated about handing over one packet by Accused No.4 to Accused No.3. Some of the amount, she has deposited in her Bank

account and some of the amount, she has returned to the Accused No.3. She accompanied the Accused Nos.3 to Dadar Railway Station and at that place, they met the Accused No.1. It is no doubt true that in a statement under Section 164 of the Code, the said witness has not referred the Accused No.4 at any place. That is to say, there are meeting by Accused No.3 to Accused No.4 in the Corporation Office or at the time of handing over the money. If, this Court will give more weightage to the statement under Section 164 of the Code as compared to statement under Section 161 of the Code, it will amount to appreciating the materials. This is not permissible at the time of framing of charge. The statement under Section 161 of the Code, discloses meeting of **Accused No.3 and Accused No.4 at two places.** Accused No.4 is charge-sheeted for hatching a conspiracy. It is not the Accused No.3 who has assaulted the First-Informant. The allegation is against the Accused No.1. **The statement further reveals meeting of Accused No.3 and Accused No.1. It is not required that every conspirator should meet other conspirator. Everyone has got a different part to play. Even if, he has played his part in part of the conspiracy, this is sufficient.**

15. The Accused No.4 was handed over a Swift Car by the garage

owner and the number was found on a chit seized from the Accused No.1. It is true that the memorandum statement of Accused No.3 records hatching of conspiracy with Accused Nos.4 and 5, He has shown readiness to show the place wherein he has parked his own car. Whereas, Accused No.4 in his memorandum statement has shown readiness to show the place wherein he has parked his Volkswagen Polo Car. The trial Court will decide its admissibility. Furthermore, it is also true that so far as Call Detail Reports are concerned, there is no conversation which is recorded. **At the most, we can say that they have conversated with each other.**

16. So far as the motive is concerned, the First-Informant has written to Senior Police Inspector – Kasturba Police Station on 13th December 2021 quoting various reasons why he doubts the Accused No.4. **There is no reference of Accused No.5.**

17. So far as the involvement of Accused No.5 is concerned, I do not find, there is sufficient material even to say, there is a strong suspicion against the Accused No.5. He was one of the Petitioners in the Writ Petition filed by them jointly. It is contended that those 4 persons have referred about the allegations made by both these Applicants against the First-Informant but except that allegation, there are no materials

collected during investigation to show his involvement. The joint representation dated 27th May 2021 (containing signatures these two Applicants) does not refer alleged imputation made against Mr.Khambit being favourable to Junior Engineers on contract basis. Even, Accused No.3 has only communicated with the Accused No.4 but not with Accused No.3. So, I feel, that the materials against the Accused No.5 are not sufficient to frame a charge.

18. So far as, Accused No.4 is concerned, there is a statement of Durgavati Yadav. It has to be believed at the time of framing of charge. It is true, there is no reference of these two Applicants in the FIR and supplementary statements of Mr.Khambit. Whatever reference is there is in the letter dated 13th December 2021 addressed to the Senior Police Inspector, it is filed belatedly. This is sufficient to raise not only suspicion but grave suspicion that he has conspired with the Accused No.3 and Accused No.1. Whether it is sufficient to prove the conspiracy or not, can be considered only when the prosecution will be granted an opportunity to prove their case. So, I do not agree with the observations of the trial Court to frame a charge against the Accused No.5. But, I agree with the findings of the trial Court to frame a charge against the Accused No.4.

19. In view of that, following order is passed:-

O R D E R

- (i) Criminal Revision Application No.29 of 2024 filed by the Applicant–**Yashwantrao Sadashiv Deshmukh** (Original Accused No.5) is **allowed**.
- (ii) The Applicant - **Yashwantrao Sadashiv Deshmukh** (Original Accused No.5) is **discharged** from the commission of the offences under Sections 307, 324, 201, 120-B read with 34 of IPC and under Sections 3, punishable under Sections 25 and 27 of the Arms Act read with Section 37(1)(A) punishable under Section 135 of the Maharashtra Police Act.
- (iii) The **impugned order** dated **26th October 2023** passed by the City Civil and Sessions Court, Borivali Division, Dindoshi, Mumbai rejecting the Discharge Application (Exhibit-28) filed in Sessions Case No.128 of 2022 of Applicant - **Yashwantrao Sadashiv Deshmukh** is **set aside**.
- (iv) Bail bonds furnished by Applicant - **Yashwantrao Sadashiv Deshmukh** (Original Accused No.5) stand cancelled.
- (v) **Criminal Revision Application (ST) No.6 of 2024** filed by the Applicant–**Shrikrishna Sadashiv Mohite** (Original Accused No.4) is **dismissed**.

20. Learned Advocate Mr.Salunkhe for the Applicant–**Shrikrishna Sadashiv Mohite** submitted that already there is an interim relief not to proceed. It is in force. He wants to challenge the said order.

21. Let, that interim order to continue for four (4) weeks.

[S. M. MODAK, J.]