



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.63 OF 2023

Shri Omprakash Bhaiyya s/o Kunjilal Bhaiyya,
Aged about 65 years,
Occupation: Civil Contractor,
R/o Biyani Chowk,
Opposite De Mart, Amravati,
Tahsil and District : Amravati. **PETITIONER**

...V E R S U S...

The State of Maharashtra through
Police Station Officer,
Police Station Bhatkuli,
District Amravati. **RESPONDENT**

Mr. S. Y. Deopujari, Advocate for Petitioner.
Mr. A. V. Palshikar, APP for Respondent/State.

CORAM: **M. W. CHANDWANI, J.**
DATE: **17th JANUARY, 2024.**

ORAL JUDGMENT:

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel for the parties.

3. The challenge in this petition is to issuance of

summons to the petitioner in Regular Criminal Case No.56/2017 issued by the Judicial Magistrate First Class, Bhatkuli.

4. The complaint was lodged by Sarpanch of Gram Panchayat Sayat, before the Block Development Officer that work orders for construction of road have been issued without calling tender through e-tendering process and by fabricating the documents which bears signature of Vishwas Mankar, Vishal Bhattad and Pranali Talmale the then Sarpanch, Upa-Sarpanch and Secretary, respectively, of Gram Panchayat Sayat as well as contractor i.e. petitioner. In turn, Block Development Officer lodged the complaint with Police Station Bhatkuli. On the said complaint crime for offences punishable under Sections 467, 468, 471, 409 read with Section 34 of IPC came to be registered against the petitioner and other accused.

5. During investigation all the alleged fabricated documents were seized. After investigating the matter, final report in terms of Section 173 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) came to be filed. The other accused were charge-sheeted. Whereas the petitioner was discharged under Section 169 of the Cr.P.C. by the Investigating Officer on the

ground that as per the handwriting expert, the signature on the forged document is not of the petitioner. The said discharge is with a rider to file charge-sheet in future if additional material is found against the petitioner. The said final report was registered as Regular Criminal Case No.56/2017 before the learned J.M.F.C., Bhatkuli. The learned J.M.F.C. passed the order to issue the process to the accused. The petitioner was also summoned to answer the charge.

6. The contention is that despite discharge of the petitioner under Section 169 of the Cr.P.C., the learned J.M.F.C., without giving any reason, mechanically issued summons to the present petitioner. The present petitioner has not been charge-sheeted. The petitioner has no role to play in the crime however, due to passing of issuance of process mechanically, the petitioner came to be summoned in the said criminal case to answer the charge. The petitioner prays for quashing of summons issued to him by the learned J.M.F.C. in the said criminal case.

7. The learned APP Mr. Palshikar fairly submits that the petitioner has not been charge-sheeted by the Investigating Officer. The order passed by the learned J.M.F.C., is without application of

mind and due to inadvertence, the summons came to be issued to the petitioner.

8. Perusal of final report goes to show that only Sarpanch, Upa-Sarpanch and Secretary are charge-sheeted and the petitioner has been discharged by the Investigating Officer under Section 169 of the Cr.P.C. Order of issuance of process shows that the learned Magistrate issued process against the accused. It appears due to inadvertence and mistake on the part of concerned Clerk who was entrusted with the work of issuance summons, after the order of the learned J.M.F.C., Bhatkuli, along with the accused also issued summons to the petitioner. Since the petitioner has not been shown as an accused in the said final report and has been shown as discharged, the summons issued to the petitioner does not stand. Therefore, summons issued to the petitioner in Regular Criminal Case No.56/2017 is quashed.

9. It is made clear that the Investigating Officer has put rider in the final report that as and when the material against the petitioner will be found, he will be charge-sheeted. This order does not preclude the Investigating Officer in doing so, if any, material against the petitioner is found. Further, this order will not limit the

power of the learned Magistrate to direct further investigation, if he found necessary.

10. In the above said terms the writ petition is disposed of. Rule is made absolute in the above terms.

JUDGE

NSN