



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1443 OF 2016

The Railway Police Froce, Thane- Bhusawal, .. **Petitioner**
Tq. Bhusawal, District Jalgaon
Through Akash Mariram Wakode
Assistant Sub Inspector

VERSUS

1. Manoj Dhanulal Agrawal,
Age 28 years, R/o House No. 356,
Itwari Bazar, Burhanpur (MP)
2. Zakir s/o Abdul Aziz,
Age 34 years, R/o Jam Mohalla,
Bhusawal, District Jalgaon
3. Harmit Kaur Shethi, Age 30 years,
R/o Gandhi Nagar, Bhusawal
District Jalgaon
4. Smt. Sandhya P. Chaudhari, ... **Respondents**
R/o Shivaji Nagar, Bhusawal
District Jalgaon

Mr. Bhushan Kulkarni, Advocate for the Petitioner,
Mr. SwapnilS. Patil, Advocate for the Respondents

CORAM : Y. G. KHOBRAGADE, J.

DATE : 13th January, 2025

JUDGMENT:-

1. **Rule.** Rule made returnable forthwith and heard finally with consent of both the sides.
2. By the present Petition, the petitioner Railway Department takes

exception to order dated 15.07.2015 passed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 97 of 2014, thereby affirmed the order dated 12.04.2012 passed by the learned Judicial Magistrate First Class (Railway Court), Bhusawal below Exh. 1 in RCC No. 79 of 2001.

3. The Petitioner Railway Department sought to prosecute the accused Komal Dhanulal Agrawal in RCC No. 79 of 2001 for offence punishable under section 143 of the of the Railways Act for black marketing of reservation of train tickets. It is the case of the prosecution that after the accused Komal Agrawal was caught with 35 reservation tickets and some filled up reservation application forms are seized. During course of investigation, the accused Komal Agrawal had made a confessional statement that his own brother Manoj Agrawal and three Enquiry/Reservation Clerks of the Railway department are involved in running illegal business of reservation of train tickets, therefore, present respondent Nos. 2 to 4 sought to be prosecuted.

4. On 12.04.2004, the learned JMFC (Railway) Bhusawal passed an order holding that present Respondent Nos. 2, 3 and 4/accused are employees of Railway Department, therefore, prior sanction under Section 197 of the Criminal Procedure Code is required, but there is no substantial evidence to show that present respondent Nos. 2 to 4 are

involved in illegal business of reservation of railway tickets and no prior sanction have been obtained. Therefore, respondent Nos. 2, 3 and 4 are discharged and no charge framed against them.

5. Being aggrieved by the said order, the Petitioner Railway Department filed Criminal Revision Application No. 97 of 2014 before the learned Additional Sessions Judge, Bhusawal. On 15.07.2015, the learned Additional Sessions Judge, Bhusawal passed the impugned order holding that there is no evidence against the accused persons/respondent Nos. 2 to 4 to prove confessional statement made by other accused Komal. So also, the observation made by the learned Magistrate in respect of sanction to prosecute the Respondent Nos. 2 to 4/accused under section 197 Cr.P.C. is bad in law.

6. Needless to say that, as per provisions of Section 197 of Cr.P.C., the sanction is required to prosecute the public servant, if said act is done by the public servant while discharging his duty. In the case in hand, the prosecution of the respondents had been sought on the confessional statement made by main accused Komal Dhanulal Agrawal for running illegal business of reservation of railway ticket. There is no other independent material to show that Respondent Nos. 2, 3 and 4 are involved in said business or they have abetted the accused Komal Agrawal for running illegal business of reservation of railway ticket. The Respondent Nos. 2 to 4 are working with the Railway Department and

they are public servant. Therefore, to prosecute Respondent Nos. 2 to 4, sanction under section 197 of the Cr.P.C. is mandatory. No doubt, such sanction can be obtained prior to filing of charge sheet but the prosecution require to show that necessary action for obtaining sanction was already initiated but said fact not disclosed by the prosecution. Therefore, I do not find that the impugned order passed by the learned Additional Sessions Judge is perverse, illegal or bad in law. Therefore, no interference is called for at the hands of this Court.

7. During the course of argument, the learned counsel appearing for the respondents invited my attention to the judgment and order dated 27th October, 2017 passed by the learned Judicial Magistrate First Class (Railway) Bhusawal passed in RCC No. 79 of 2001 (Central Railway through RPF, Bhusawal Vs. Komal Dhanulal Agrawal), wherein, the accused No.1 Komal has been acquitted for the offence punishable under section 143 of the Railways Act. Therefore, even though the prosecution probably filed the appeal challenging the order of acquittal of main accused Komal, it will not be helpful to the prosecution to prove the accusation of the Petitioner to implicate the respondents for the offence punishable under Section 143 of the Railways Act. Zneedless to say that merely confessional statement made by one accused is not sufficient to prove the guilty of other accused without proving corroborate piece of evidence.

8. In the case in hand, the Petitioner has not brought any other independent material on record to implicate the respondent Nos. 2 to 4 for the offence punishable under section 143 of the Railways Act. Therefore, considering the findings recorded by the Revisional Court, there does not appear any perversity or illegally.

9. In view of the above, the Criminal Writ Petition is dismissed. Accordingly rule discharged.

(Y. G. KHOBRAGADE, J.)

JPChavan