



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION [APL] NO.87 OF 2024**

Pushpendrakumar s/o Kesarilalji Sharma,  
Aged about 59 years,  
Occupation-Business,  
R/o. Shastri Nagar, Behind Akashwani,  
Akola, Tq. & District-Akola. .. Applicant

..Versus..

State of Maharashtra,  
through Officer-in-Charge of  
Police Station, City Kotwali,  
Akola, Tq. & District-Akola. .. Respondent

.....  
Mr. H.R. Gadhia, Advocate for Applicant,  
Ms. Soniya Thakur, APP for Respondent/State.  
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**CORAM : PRAVIN S. PATIL, J.**  
**DATED : 10.02.2026.**

**JUDGMENT**

1. By this application, the applicant is seeking to quash and set aside the judgment dated 28.1.2016 passed by the Judicial Magistrate, First Class, Akola in R.C.C. No.830/2009 to the extent of directing the respondent to file fresh chargesheet against the present applicant for the offence punishable under

Sections 370 and 374 of the Indian Penal Code and Sections 23, 24 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

2. The applicant approached before this court with a submission that the order which is challenged is of dated 28.1.2016 whereby the learned Magistrate has directed to file a fresh chargesheet against the present applicant, but till date, the chargesheet is not filed in the matter by the prosecution and, therefore, considering the fact that both the accused have been acquitted on merits in the matter, the present applicant be also acquitted by modifying the judgment. Hence, he invoked the extra-ordinary jurisdiction of this court in the matter.

3. The case of the applicant, in brief, is that on 5.3.2007, the applicant was awarded the contract by the Akola Municipal Corporation on Build Occupy and Transfer (BOT) basis of Plot No.107 and 109, bearing Survey No.39B of Gandhi Road, Akola. The applicant on 16.5.2007 delegated the said work to the sub-contractor namely Sheikh Bashir Sheikh Gaffar, who was accused no.2 in the matter.

4. As per the agreement between the accused no.2 and the applicant, all the liabilities including recruitment of labour in respect of work was of the sub-contractor. The said sub-contractor has further sub-delegated the said work to one Bandu Punjaji Surushe (accused no.3). The applicant is not aware what was the terms of agreement between accused nos.2 and 3.

5. During the progress of the work, the Superintendent appointed under the provisions of Juvenile Justice Act, conducted a raid on the premises where the aforesaid work was going on. In his raid, he found that three persons namely, Samadhan Digambar Kamble, Ram Pundlik Waghmare and Rajik Sadik Sheikh, below 18 years of age, working as a child labour on the site. Accordingly, the Superintendent registered the FIR on 29.6.2007 against the present applicant and the sub-contractor namely Sheikh Bashir Sheikh Gaffar and Bandu Punjaji Surushe for the offence punishable under Section 370 and 374 of the Indian Penal Code and Sections 23, 24 and 26 of the Juvenile Justice (Care and Protection of Children) Act,

2000.

6. The applicant further pointed out that he was arrested in connection with the said crime on 29.6.2007 and offence being bailable, he was enlarged on bail immediately on furnishing the bond. After the investigation is completed, the chargesheet was filed in the matter on 24.1.2009 against all the accused persons.

7. It is the submission of the present applicant that he never received the summons of RCC No.830/2009 nor the copy of chargesheet which was filed in the matter. According to the applicant, when his statement was recorded by the investigation officer, the address which he has given is the same which is recorded in the present application. As such his address is not changed in the matter. Hence, he is not aware as to why the copy of summons or chargesheet was not supplied to him.

8. In the background of this factual position, the learned Magistrate proceeded to decide the matter and by holding that the applicant is not traceable in spite of sufficient efforts, declared him absconder and proceeded to decide the case on

merits in respect of accused nos.2 and 3.

9. The learned Magistrate, while deciding the proceeding on merits, recorded the finding that the witness namely, Samadhan Kamble, Ram Waghmare and Rajik Sadik turned hostile and denied the fact that they were arrested by the police as a child labour. So also, Investigation Officer was not examined by prosecution, as such, the order of Collector by which squad was authorized to raid the spot, did not come on record. In absence of evidence of Investigation Officer and order on record, nothing has been proved against the accused persons in the matter. As such, considering the lacuna on the part of the prosecution and non-cooperation of the witnesses, the learned Magistrate by his judgment dated 28.1.2016 acquitted the co-accused namely, Sheikh Bashir Sheikh Gaffar and Bandu Punjaji Surushe. However, in respect of applicant, it is held that the prosecution should file the fresh chargesheet in the matter as he is found to be absconded.

10. In the background of above said factual position, the applicant approached before this court in the matter. The first

submission of the applicant in the matter is that the applicant admittedly the judgment is of dated 2016 and near about 10 years has been elapsed, but no fresh chargesheet is filed against the applicant in the matter. This fact itself demonstrates that the prosecution is well aware that there is no documentary evidence available before them and the witnesses being turned hostile, no fruitful purpose will be served by filing fresh chargesheet. Hence, according to him, considering this aspect of the matter and no fruitful result is going to be came out, the applicant is also required to be acquitted from the offence registered against him in the matter by modifying the judgment of the learned Magistrate.

11. The learned APP has conceded the fact that there is no justification on the part of the prosecution for not filing the fresh chargesheet, as directed by the Magistrate in the matter. The learned APP further not disputed the fact that the witnesses, on the basis of which the case was registered, has turned hostile and secondly there is no order of the Collector of authorising the squad for conducting a raid on the work place of applicant. As such in absence of these material documents,

prosecution can't prove its case in the matter.

12. It is further pertinent to note that, offence is not registered by applying right provision of Indian Penal Code. In the year 2007, when offence is registered against applicant under Section 370 of the Indian Penal Code, it was titled as 'Buying of disposing of any person as a slave'. This provision was substituted w.e.f. 3.2.2013 by Criminal Law (Amendment) Act, 2013 as "Trafficking of Person". But considering the allegation against the applicant of employing a minor person at work, do not found in any of those provision an act attracting any offence. Hence, no offence is made out against applicant in the matter.

13. It is the submission of applicant in case chargesheet would have been filed against applicant, the facts recorded by Trial Court while acquitting other two accused would not change in the matter, because on the basis of same evidence, offence is registered against applicant. Therefore, applying same yardstick, applicant is entitled for same relief in the matter.

14. Learned APP has pointed out, there is one impediment to apply the same yardstick, because applicant being declared absconder, he is not entitled for same benefit. Applicant states that declaring him absconder is itself illegal. According to him, under Section 82 of the Code of Criminal Procedure specific procedure is incorporated in the matter. However, without following said procedure, applicant is declared as absconder. In my opinion, applicant is correct in stating that applicant is declared absconder without following the mandate of Section 82 of the Code of Criminal Procedure.

15. It is pertinent to note that learned Magistrate in its judgment by recording the specific reasons that witnesses Samadhan, Ram and Sheikh Rajik turned hostile, non-examination of Investigation Officer and consequently not production of order of Collector by which raid was permitted on the work site is vital lacuna in the entire prosecution case, granted acquittal to co-accused in the matter. In my opinion, no further evidence can be brought against the applicant after such a long period. Hence, there is no valid and sufficient reason to permit the prosecution to file fresh chargesheet

against applicant in the matter.

16. In respect of the offence under Sections 23, 24 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is seen that in the entire chargesheet there is no allegation that children below age of 18 years found to employed as a beggar by applicant. As such, implicating the applicant under the provisions of this Act-2000 is also not justified in the matter.

17. Considering the overall factual as well as legal position, in my opinion, continuing the proceeding against the present applicant is nothing but abuse of process of law. If the prosecution would have really interested to prosecute the present applicant, fresh chargesheet would have been filed with immediate effect after order of learned Magistrate dated 28.1.2016. However, till date, more than 10 years has been elapsed, but it is not the case of the prosecution that they are ready to file the fresh chargesheet against the present applicant in the matter. Hence, I proceed to pass the following order :

O R D E R

(1) The application is allowed.

(2) It is held that declaring the Applicant as a 'Absconder' by Judicial Magistrate is illegal in view non adherence of procedure incorporated under Section 82 of the Code of Criminal Procedure.

(3) The impugned judgment dated 28.1.2016 passed by the learned Judicial Magistrate, First Class, Akola in R.C.C. No.830/2009 to the extent of directing the respondent to file a fresh chargesheet against the present applicant is hereby quashed and set aside.

(4) The offence registered against the present applicant vide Crime No.3059/2007 for the offences punishable under Sections 370 and 374 of the Indian Penal Code and Sections 23, 24 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000, is also quashed and set aside.

(5) No order as to costs.

**(Pravin S. Patil, J.)**