

(2022) 05 BOM CK 0076

In the Bombay High Court

Case No : Criminal Application No. 997 Of 2018

Sopan Damodar Patil

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 239, 482

Indian Penal Code, 1860 — Section 420, 464, 467, 468, 471

Citation : (2022) 05 BOM CK 0076

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Shekhar Ingawale, Anand S. Pati, A.R.Patil

Final Decision : Allowed

Judgement

N. J. Jamadar, J

1. The applicant accused has invoked the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 ('the Code') being aggrieved by an order dated 15th March 2018 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No.05 of 2015, whereby the learned Additional Sessions Judge, Kolhapur dismissed the revision and affirmed the order passed by the learned Judicial Magistrate, F.C., Kolhapur on an application (Exh.17) in Regular Criminal Case No.981 of 2013, whereby the learned Magistrate opined that the prima-facie case to frame charge against the accused for the offences punishable under sections 420, 464, 467, 468, and 471 of the Indian Penal Code, 1860 ('the Penal Code') was made out.

**** Order is corrected as per order dated 31st May 2022**

2. The background facts can be stated as under :-

2.1 The applicant was working as a Government Contractor. The applicant had submitted tenders for allotment of the work contract. As per the prevalent norms

to be eligible to submit tenders for work beyond an estimated cost, the contractor was required to be classified in a particular class. For the said purpose, a Work in Hand Certificate was required to be obtained from the competent officer of the Public Works Department.

2.2 One Shri Krushna Bandu Shelar, a relative of the applicant, gave complaint to the effect that the applicant had obtained a false certificate of registration under a particular class and, on the basis of such false and forged certificate, the applicant got the work allotted to him. Pursuant thereto, the office of the Executive Engineer, Public Works Department, Kolhapur conducted an enquiry. It transpired that the Work in Hand Certificate annexed to the application for registration submitted by the applicant on 17th November 2000 was forged.

2.3 Mr. Viaykumar Ganpatrao Patil, the Deputy Executive Engineer, Public Works Department, Kolhapur thus lodged a report against the applicant for the offences punishable under sections 420, 464, 467, 468 and 471 of the Penal Code. The first informant, inter-alia, alleged that upon enquiry with the office of the Executive Engineer, Koyna Construction Division No.1, Koynanagar, it transpired that the said certificate was not signed by the Executive Engineer who was then posted in the said office. Nor the outward number appearing on the said certificate was the number of outward register maintained with the said office. It was further alleged that in the explanation furnished by the applicant, the latter had conceded that he had not obtained the said certificate from the office, which purportedly had issued the same.

3. Investigation commenced. During the course of investigation, the investigating officer recorded the statements of witnesses. Copy of allegedly forged document came to be seized. After finding complicity of the applicant, charge-sheet was lodged for the offences punishable under sections 420, 464, 467, 468 and 471 of the Penal Code.

4. The applicant preferred an application for discharge under section 239 of the Code. The learned Magistrate was persuaded to reject the application holding, inter-alia, that the offences were prima-facie made out. Revision Application No.5 of 2015, preferred by the applicant, thereagainst did not yield any success. Hence, the applicant has invoked the inherent jurisdiction of this court under section 482 of the Code.

5. I have heard Mr. Ingawale, the learned counsel for the applicant, and Mr. Patil, the learned APP for the State at some length.

6. The learned counsel for the applicant submitted that the learned Magistrate as well as the learned Additional Sessions Judge approached the issue from an incorrect perspective. The courts have not at all adverted to the issue as to whether the false document, as alleged, was ever in existence, and whether the authorship of the alleged forgery can be attributed to the applicant. Laying emphasis on a communication dated 2nd November 2013 from the office of the Executive Engineer, Public Works Department, to the Police Inspector, Shahupuri

Road Police Station, it was urged that the authorities have clearly recorded that the original certificate was not at all received by the Public Works Department at Mantralaya, Mumbai. Thus, the very factum of the existence of the document, which has allegedly been forged is not established, urged the learned counsel for the applicant.

7. In the backdrop of the aforesaid nature of the challenge, the learned APP was requested to take instructions as to whether the allegedly forged Work in Hand certificate (copy of which is placed at page 48 of the application) was ever seized by the police.

8. The learned APP, on instructions, submits that the entire investigation was conducted based on the photostat copy of the Work in Hand Certificate, which has allegedly been forged, and the original was never seen. The learned APP also invited the attention of the Court to the report of the Handwriting Expert which alludes to the fact the original document was not forwarded for analysis, and, therefore, no opinion about the contents of the said photostat copy can be given.

9. The learned counsel for the applicant submitted that the intrinsic evidence of Work in Hand Certificate belies the case of the prosecution. Firstly, there is no material to show that the said certificate was tendered by the applicant. It does not bear the signature of the applicant. Secondly, the said certificate was allegedly issued on 16th December 2000. Whereas the applicant had fled the application for being classified as the Contractor of Class-I (B) on 17th November 2000. The said application, thus, pre-dates the certificate which was allegedly forged, and appended to the application dated 17th November 2000.

10. The learned Additional Sessions Judge was of the view that the fact that the original document was not placed on record did not materially detract from the prosecution case as the evidentiary value of a true copy of the allegedly forged document can be considered during the trial.

11. I am afraid to unreservedly subscribe to the aforesaid view of the learned Additional Sessions Judge. It is imperative to note that the prosecution was enjoined to show albeit prima-facie that the applicant had prepared a false document and used the false document as a genuine one. In the case at hand, the material on record nowhere indicates that the applicant had submitted the alleged false document.

12. We have noted above that allegedly forged Work in Hand certificate was prepared subsequent to the filing of the application for classification under a particular class. The statement of none of the witnesses recorded during the course of investigation reveals that it was the applicant who had submitted the certificate in question.

13. Had it been a case that the existence of original Work in Hand Certificate could be vouched for, at a particular point of time, the fact that, subsequently, the original was lost might not have detracted materially from the prosecution

case. However, the material on record does not indicate that the original was in existence at any point of time and, thereafter, the original document was lost. The communication by the Executive Engineer, Public Works Department, Kolhapur that the original was even not submitted to the Public Works Department, Mantralya is required to be considered through the aforesaid prism.

14. In the light of above, the material on record does not prima-facie indicate that the applicant had prepared a false document. The prosecution against the applicant, thus, seems to be wholly groundless.

15. Hence, I am persuaded to quash and set aside the orders passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No.05 of 2012 and the learned Judicial Magistrate, Kolhapur below Exh.17 in Criminal Case No.981 of 2013.

16. Hence, the following order :

ORDER

(i) The application stands allowed.

(ii) The impugned order passed by the learned Additional Sessions Judge, dated 15th March 2018 in Criminal Revision Application No.05 of 2015 as well as the order, dated 13th November 2014 below Exhibit 17 in Regular Criminal Case No.981 of 2013 passed by the learned Judicial Magistrate, First Class, Kolhapur stand quashed and set aside.

(iii) The proceedings in Regular Criminal Case No. 981 of 2013 also stand quashed and set aside.

The application stands disposed.