



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

CRIMINAL WRIT PETITION NO. 1124 OF 2018

Kamal Chandra Tiwari ... Petitioner
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Jagdish G. Aradwad (Reddy) a/w Ajinkya Reddy for the Petitioner.
Ms. M. H. Mhatre, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 28th JUNE, 2023

P.C. :-

1. The petitioner is an employee of the National Defence Academy and posted at Khadakwasla, Pune. It appears that the certificate of handicap submitted by the petitioner dated 1st December, 2012 issued by Sassoon Hospital, Pune certifying that he has suffered 41% of disability was referred for verification.

2. Since, the original record pertaining to said certificate was not traceable at Sassoon Hospital, the complaint came to be lodged from the employer alleging production of forged certificate certifying the petitioner to be a handicap person.

3. As a sequel of above, Crime No. 36 of 2016 dated 7th May, 2016 for an offence under Sections 420, 467, 468 and 471 of the Indian

Penal Code came to be registered at Khadakwasla Police Station, Pune.

4. After the investigation the petitioner came to be charge-sheeted in the aforesaid offence, which was submitted in the Court of Judicial Magistrate, First Class on 27th July, 2017.

5. The entire genesis of the offence alleged against the petitioner in the FIR and charge-sheet is about the forged certificate.

6. The Sassoon Hospital, who has issued the certificate in question, vide communication dated 9th September, 2016 addressing the Investigating Officer has informed that original record of the aforesaid certificate is traced.

7. Once it was brought to the notice of the Investigating Officer that the original record was traced and the photocopy of the certificate of handicap, which was found to be a basis for registration of offence could have been verified from the original record available with the Sassoon Hospital, the said officer maliciously by ignoring the communication of the Sassoon Hospital dated 9th September, 2016 proceeded to file the charge-sheet thereby initiating malicious prosecution against the petitioner as is claimed by the counsel for the petitioner.

8. In this backdrop, this Court while issuing notice on 8th February, 2019 directed the Investigating Officer to file his affidavit explaining whether he has looked into the record traced out as has been

communicated to him vide communication dated 9th September, 2016. The said officer has filed an affidavit in compliance thereof and has ignored the very directions of this Court as he has not commented on the said issue as to whether before the filing of the charge-sheet he has looked into the record of the Sassoon Hospital in relation to the handicap certificate issued in favour of the petitioner.

9. The aforesaid act on the part of the Investigating Officer is in contempt of the order dated 8th February, 2019. Not only the aforesaid contemptuous act which can be *prima facie* inferred, the said Officer *prima facie* appears to have maliciously filed charge-sheet against the petitioner.

10. In the aforesaid background, we deem it appropriate to issue contempt notice to Anand M. Pagare who at the relevant time was posted as Assistant Police Inspector at Hinjewadi Police Station, Pune viz. on the date of swearing and filling of the affidavit dated 4th April, 2019. Let the aforesaid notice be issued through the Commissioner of Police, Pune, calling upon him to physically remain present before this Court so as to enable this Court to frame charge against him for contemptuous act and also as to why he should not be proceeded against for filing of criminal proceedings for malicious prosecution of the petitioner ignoring his statutory obligation and duties under the provisions of Criminal Procedure Code. He should also be put to notice that as to why he should not be directed to pay a compensation of Rs.10,00,000/- to the petitioner in view of aforesaid serious default.

11. We direct the Commissioner of Police, Pune to complete service and submit report of compliance before this Court, in any case by 13th July, 2023.

12. Let the matter come up before this Court on 13th July, 2023 at 2:30 p.m.

13. We direct the learned APP to communicate this order to the Commissioner of Police, Pune.

14. In the backdrop of aforesaid observation, the further criminal proceedings initiated against the petitioner, in relation to the offence mentioned herein above, shall remain stayed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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DHARMENDER
PRITHIANI

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