



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5057 OF 2022

Digambar Shivaji Igave

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 1410 OF 2020

Yogesh Dattatray Desai

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 3120 OF 2022

Santosh Bhimashankar Kokane

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 3175 OF 2021

Vaibhav S/o Sahebrao Kamble

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 5574 OF 2021

Anand Laxman Gavandi (vadar)

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 5482 OF 2021

Chand Dadasaheb Mulla

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 5486 OF 2021

Shivaji Tatyaba Markad

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 5416 OF 2021

Sanjay Laxman Kulkarni

....Petitioner

V/s.

The State of Maharashtra

...Respondent

WITH
WRIT PETITION NO. 531 OF 2021

Ganesh Amrut Mankar

....Petitioner

V/s.

The State of Maharashtra

...Respondent

Mr. Niranjana Mundargi with Mr. Subhash Jadhav, Mr. Chandansingh Shekhawat, Mr. Yashovardhan Deshmukh & Ms. Keral Mehta i/b Panrinam Law Associates, for WP/1410/2020.

Mr. Vilas Tapkir, for Petitioner in WP/5574/2021, WP/5482/2021, WP/5486/2021 & WP/5416/2021.

Mr. Nitin Deshpande, for Petitioner in WP/3175/2021.

Mr. Kuldeep U. Nikam with Mr. Prasad Avhad & Mr. Om Latpate, for Petitioner in WP/5057/2022 & WP/3120/2022.

Mr. Abhijeet Desai with Mr. Karan Gajra, Ms. Mohini Rehpade, Smt. Daksha Punghera, Mr. Vijay Singh, Ms. Sanchita Sontakke & Mr. Digvijay Kachare i/b Desai Legal, for Petitioner in WP/531/2021.

Mr. Ajay Patil, APP for State, Respondent.

Ms. Madhuri Bhosale, DYSP, ACB, Pune, present.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 30 August 2024.

Pronounced On : 13 September 2024.

JUDGMENT :

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petitions are taken up for final hearing and disposal.

THE CHALLENGE

2) These Petitions are filed by Petitioners challenging Order dated 30 August 2014 passed by the learned Special Judge and Joint Ad-hoc Additional Sessions Court, District-Pune, rejecting the Discharge Applications filed by them in Special Case No.11 of 2010.

FACTS

3) A brief factual narration of the case would be necessary. The State Government sanctioned various posts of Jail Sepoy, Group-C, in various prisons under the Home Department of Government of Maharashtra. Accordingly, the Deputy Inspector General of Prison (Western Region), Pune issued advertisements for undertaking selection process for filling of 67 posts of Jail Sepoy, Group-C. The Recruitment Rules applicable to the post of Jail Sepoy, Group-C prescribed for educational and physical criteria. Candidates fulfilling the educational and physical criteria were subjected to physical test comprising 100 marks, which was to be conducted against 8 parameters. The candidates clearing the physical test were to be subjected to the written test for 80 marks. Candidates passing the written test were to be subjected to oral interview of 20 marks.

Accordingly selection process was implemented by a Committee under the Chairmanship of Accused No. 1, who functioned as Deputy Inspector General of Prison (Western Region), Pune at the relevant time. FIR was lodged on 3 March 2006 by Shamrao Yadu Mohite, Assistant Police Commissioner, Anti Corruption Bureau (**ACB**) on the basis of letter dated 20 June 2005 addressed by Principal Secretary (Prisons), Home Department, Mantralaya, Mumbai alleging irregularities in the selection process. With reference to the said letter, directions were issued by Director General of Police, ACB for conduct of open enquiry. In the meantime, one Shri Arun Bhalerao had submitted application to Deputy Police Commissioner, ACB, Pune alleging irregularities in the selection. Accordingly, his application was also included in the open enquiry and a common open enquiry was conducted. During the course of enquiry, statements of 105 witnesses were recorded and it was revealed that illegalities were committed while filling up 67 posts of Jail Sepoy prisons (Western Region), Pune. It was alleged in the FIR that Accused No.1 -Dhanaji Choudhari was functioning as Deputy Inspector General, Western Region during the period from 23 August 2004 to 13 July 2005 and was incharge of 10 prisons and that he was Chairman of the Committee constituted for conduct of selection. It was alleged that a criminal conspiracy was hatched by Accused No.1-Dhanaji Choudhari, his Personal Secretary Smt. Nirmala Jadhav (Accused No.2) and Establishment Clerk-Chand Dadasaheb Mulla (Accused No.3) and in furtherance of such conspiracy, various criminal acts are committed. The FIR listed various allegations against the trio, further alleging that they took aid of their trusted officials in such conspiracy.

4) After conducting the investigations, chargesheet was filed by ACB, in which Petitioners are arraigned as accused. Petitioners filed applications for discharge in Special Case No.11 of 2010. By common

order dated 30 August 2014, the said discharge applications have been rejected, which is subject matter of challenge in the present Petitions.

GIST OF ALLEGATIONS

5) Before recording submissions it would be necessary to first discuss the allegations levelled against each of the Petitioners involved in the present Petitions, which are as under:-

(i) Accused No.15-Digambar Shivaji Igave (Writ Petition No.5057 of 2022) : Petitioner was posted as Trainee Jail Officer, Training College, Yerwada, Pune. He was assigned the task of invigilating the answer sheets of candidates in selection process. He involved himself in the criminal conspiracy with Accused No.1 for selecting candidates of choice of Accused No.1 and committed criminal acts. In pursuance of such conspiracy with Accused No.1, the answer sheets of candidates bearing Chest Nos. 4181 and 3903 were summoned by Accused No.4-Yogesh Desai and handed over to Petitioner for rechecking. During the course of rechecking, overwritings are found to be made in the answer sheets by white ink marks in respect of altered answers and that marks are awarded in respect of those questions, which were earlier treated as incorrect and accordingly 16 and 4 additional marks respectively were awarded to those candidates.

(ii) Accused No.6-Vaibhav S/o Sahebrao Kamble (Writ Petition No.3175 of 2021) :

He was posted during the period 8 June 2004 to 3 March 2006 as Prison Superintendent in District Central Prison. He was assigned the task of conducting shot put element of physical test as well as of invigilating answer sheets in written examination. He became part of

criminal conspiracy with Accused No.1. He changed the marks awarded to sister of Accused No.1 (Chest No.5070) in shotput category by awarding two additional marks. Similarly, in respect of candidate with Chest No.4158 (Prison Guard's son), he increased two marks by changing the records. In respect of the candidate with Chest No.4410, he himself changed the answers of 19 questions and awarded 7 additional marks to extremely low-quality essay by awarding 26 additional marks in written examination.

(iii) Accused No.13-Ganesh Amrut Mankar (Writ Petition No.531 of 2021):-

He was posted as Probationary Prison Officer in the Training College at Yerawada and was assigned the task of invigilating answer sheets of candidates. He became part of conspiracy with Accused No.1 in selecting candidates of choice of Accused No.1 and during rechecking, he awarded 28 additional marks to candidate bearing Chest No.4108 after Accused No. 4 had summoned marksheet of the candidate for checking.

(iv) Accused No.9-Sanjay Laxman Kulkarni (Writ Petition No.5416 of 2021) :

He was posted during the period from 10 January 1989 to 30 October 2006 as Prison Superintendent in District Prison, Ahmednagar and was assigned the task of conducting physical test of male candidates in respect of '800 Meter Running' category and female candidate for shotput category. That he became part of conspiracy of Accused No.1 and granted additional 4 marks to candidate with Chest No.2635 by tinkering with the marks awarded in 800 Meters Running category.

(v) Accused No.4-Yogesh Dattatray Desai (Writ Petition No.1410 of 2020) :

He was posted during 11 April 2003 to 18 March 2005 as Principal in D.J. Prison Officer Training College, Yerawada, Pune and was assigned the task of conducting physical test in category of '100 Meters Running', setting question paper for written test, invigilating answer sheets, etc. He became part of criminal conspiracy with Accused No.1 and called for answer sheets of candidates of his choice and got their answers changed through other accused by awarding additional marks in respect of candidates having Chest Nos.5070, 4594, 4139, 3311 and 2909. In respect of some candidates, he himself increased marks and in respect of other candidates, he got the marks increased through other accused.

(vi) Accused No.5-Shivaji Tatyaba Markad (Writ Petition No.5486 of 2021) :

He was posted as District Prison Superintendent, Sangli, during the period from 15 June 2003 to 3 March 2006 and was tasked with conducting physical test as well as invigilating the answer sheets of written test. He became part of the criminal conspiracy with Accused No.1. Candidate with Chest No.5235 could not secure qualifying 24 marks in the physical test and was awarded only 23 marks. However, for declaring her eligible, her marks were tinkered with by awarding 5 additional marks and thereafter she was allowed to participate in further stages of physical test by awarding extra marks at every stage and was granted appointment.

(vii) Accused No.10-Anand Laxman Gavandi (Vadar) (Writ Petition No.5574 of 2021) :

He was posted as Prison Superintendent during 10 January 1989 to 31 October 2006 in District Prison, Ahmednagar and was assigned the task of conducting physical test and invigilating answer sheets of

written test. He became part of criminal conspiracy with Respondent No.1 and increased two marks in respect of candidate bearing Chest No.4158, who is son of Prison Guard.

(viii) Accused No.16-Santosh Bhimashankar Kokane (Writ Petition No.3120 of 2022) :

He was posted as Probationary Prison Officer in Training College, Yerawada and was assigned the task of invigilating the answer sheets. He became part of criminal conspiracy with Accused No.1 and made overwritings in answer sheets of candidates bearing Chest Nos.5285, 5235 and 5432 for award of additional marks.

(ix) Accused No.3-Chand Dadasaheb Mulla (Writ Petition No.5482 of 2021) :

He was posted as Establishment Clerk in the office of Prison Deputy Inspector General (Western Region), Yerawada, Pune. He was tasked with various administrative duties relating to the selection process while working with Accused No.1. He made unauthorised changes in the records of 26 candidates for increasing their marks. During oral interviews, he deliberately made group of 12 candidates for appearing in interview at the same time with the intention of preventing proper evaluation of candidates and for award of higher marks for candidates of choice. He ensured that the candidates were subjected to routine questions and in the process, ensured award of additional marks to 28 candidates. By preparing erroneous merit list, he deliberately deleted names of 19 candidates and replaced them with 19 non-selected candidates. While only 2% posts were reserved for Project Affected Persons and 3% for Earthquake Affected Persons, he selected more candidates than permitted percentage in Project Affected category at the cost of the candidates in Earthquake Affected category.

SUBMISSIONS

6) Mr. Mundargi, the learned counsel appearing for the Petitioner in Writ Petition No.1410 of 2020 would submit that sufficient material is not available on record to raise even a suspicion, much less grave suspicion against his client. He would submit that in so far as offences under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (**PC Act**) are concerned, there is no allegation of securing any pecuniary advantage by any of the accused in the charge-sheet. That thus commission of offences under the PC Act is *prima facie* not borne out even if the allegations in the charge-sheet are taken as correct. That even if the ACB succeeds in proving the allegations in the charge-sheet, it will not be able to secure conviction of accused under Section 13(1)(d) and 13(2) of the PC Act. So far as the offences under Sections 467, 468 and 471 of the IPC are concerned, Mr. Mundargi would submit that the offences relating to forgery and falsification of records are also not made out in the present case since there is no allegation of any of the accused having committed any forgery under Section 464 of the IPC. That for commission of act of forgery, there needs to be an allegation where accused has dishonestly or fraudulently made a false document for creating the belief that such document has been made by some other person. In the present case, the allegations against the accused are with regard to making alterations in the documents, of which the accused themselves are the authors. That the allegation essentially is to award additional marks by rechecking the answer sheets or by increasing the marks awarded to the candidate. That the original acts of checking and awarding of marks in physical and written test is performed by accused themselves. That in none of the cases, there is any allegation that any of the accused has done any overwritings or corrections in respect of the document created by some

other person. He would therefore submit that even if the allegations levelled against the accused are taken as correct, still offences under Sections 467, 468 and 471 are not made out.

7) Mr. Mundargi would further submit that so far as offence under Section 120-B is concerned, the said offence cannot be alleged on a standalone basis in absence of commission of any other offence. That if offences under Sections 467, 468 and 471 of the IPC as well as under Sections 13(1)(d) and 13(2) of the PC Act are not made out, offence under Section 120-B would have no legs to stand on its own. Even otherwise, Mr. Mundargi would submit that, no material is produced to indicate meeting of minds by the accused for the purpose of hatching any conspiracy. There is no allegation in the entire charge-sheet that accused got together at any point of time and prepared a plan for commission of crime. That therefore the allegation of conspiracy is also impossible of being proved.

8) Mr. Vilas Tapkir, the learned counsel appearing for the Petitioners in Writ Petition Nos. 5574 of 2021, 5482 of 2021, 5486 of 2021 & 5416 of 2021 would adopt the submissions of Mr. Mundargi. He would additionally submit that this Court has discharged Accused No.7-Umaji Tolaram Pawar by allowing Criminal Writ Petition No.3817 of 2014. That the allegations against Accused No.7-Umaji Pawar are similar to that of his clients and that since Accused No.7 is discharged, there is no reason why his clients should be continued to be prosecuted. That Accused No.7 was Secretary of the Selection Committee and has played far greater role in the selection process than that of his clients. He would submit that all the acts done by his clients are in *bonafide* performance of their duties. Mere corrections or additions in the marks upon rechecking cannot be a reason for alleging an act of crime in absence of any allegation of securing any pecuniary advantage. That no

complaint has been made by any candidate relating to the selection and his clients are unnecessarily roped in as accused in the Special Case.

9) Mr. Deshpande, the learned counsel appearing for Petitioner in Writ Petition No.3175 of 2021 would also adopt the submissions of Mr. Mundargi. Additionally, he would submit that no candidate has made any complaint about award of any extra marks or error in awarding of marks on the part of his client. That for proving the allegations relating to overwritings /changes, the answer sheets are not sent to handwriting expert. Awarding of marks to essay is based on perception of the invigilator and it is too farfetched to infer criminality on account of awarding of particular marks by the invigilators by inferring that the essay was of low quality. He would refer to allegations in the FIR about the conduct of meeting dated 12 March 2005 for clarifying that the said meeting was held only for conduct of selection process and holding of such meeting cannot be a reason for inferring that there was any meeting of minds between accused for commission of crime. That there is no allegation in the entire charge-sheet that his client had agreed to commit conspiracy with Accused No.1 for awarding marks during the selection process to any particular candidate.

10) Mr. Desai, the learned counsel appearing for the Petitioner in Writ Petition No.531 of 2021 would submit that the role ascribed to his client is in connection with the conduct of Accused No.4-Yogesh Desai. That there is nothing in the charge-sheet to indicate that his client had any intention of awarding any additional marks to the candidate in question. That Umaji Pawar-Accused No.7, who was accused of awarding 28 additional marks, has been discharged by this Court.

11) Mr. Nikam, the learned counsel appearing for Petitioner in Writ Petition Nos.5057 of 2022 and 3120 of 2022 would adopt the submissions canvassed by the other learned counsel appearing for the Petitioners. Additionally, he would submit that subjecting Petitioners to trial on the basis of material on record would be sheer abuse of process of law and the ACB would not be in a position to secure their conviction either for offences under the IPC or for the offences under the PC Act.

12) Petitions are opposed by Mr. Patil, the learned APP appearing for the Respondent-State. He would submit that sufficient material is available on record for raising grave suspicion against Petitioners. The case involves recruitment related scam where Accused No.1 selected and appointed candidates of his choice by conspiring with the other accused by indulging in large scale acts of forgery, falsification of records, corruption, etc. That such a large scam, spread across several officials involved in the case, is impossible of being committed unless all the accused conspired in commission of crime. That the sanctioning authority has applied its mind to the evidence on record and has thereafter passed sanction order dated 15 October 2009 and that therefore it cannot be stated that there is insufficient material for bringing home charges against the accused. That Petitioners are expecting this Court to conduct a mini trial for discharging the Petitioners by appreciating the evidence on record, which is impermissible in law. He would rely upon compilation of documents containing statements of various witnesses to demonstrate as to how the accused have committed the offences of changing the answers, falsifying the records, making overwritings in answer sheets and awarding undue marks to the candidates in question. By way of illustration, he would take me through the statements of some of the witnesses in support of his contention that when the concerned

candidates were shown their respective mark sheets, they have admitted the factum of awarding undue marks to them. Mr. Patil would submit that prosecution may be permitted to adduce the evidence before the Trial Court and make an attempt to secure conviction of the accused rather than interrupting the trial at premature stage. He would pray for dismissal of the Petitions.

CONSIDERATION AND REASONS

13) I have considered the submissions canvassed by the learned counsel appearing for rival parties and have also considered the accusations levelled against the Petitioners in charge-sheet, findings recorded by the prosecution sanctioning authority in the order dated 15 October 2009 as well as the reasonings adopted by the learned Special Judge while passing the impugned order dated 30 August 2014. Keeping in mind the principle of the Court undertaking the exercise of only sifting and weighing the evidence on record for the purpose of finding as to whether a case of grave suspicion is made out or not, I have glanced through the evidence on record.

14) From contents of the charge-sheet, it appears that mainly the case is sought to be built against Accused No.1-Dhanaji Chaudhari, who was functioning as Prison Deputy Inspector General, (West Region), Yerawada, Pune and who had initiated the recruitment process by issuance of advertisement for filling up 67 vacant posts of Jail Sepoy, Group-C. It appears that about 8,600 candidates applied in pursuance of the advertisement. Candidates, who were found to be educationally and physically qualified, were subjected to physical test as provided for in the Recruitment Rules for adjudging their fitness against 100 marks. The candidates, who qualified in the physical test,

were thereafter subjected to written examination, which was conducted for 80 marks. The last phase of selection process comprised of oral interview for 20 marks. The candidates, who passed all the stages for selection, were apparently treated as selected for being appointed on the post of Jail Sepoy, Group-C.

15) Perusal of the accusations in the charge-sheet would indicate that the inference of irregularities in the selection is essentially drawn by accusing Accused No.1 of selecting candidates of his choice for appointment of Jail Sepoy. Though distinct allegations are made in respect of each of the Accused Nos. 3 to 16, the common thread that runs through allegations against them is that they conspired with Accused No.1 in selecting candidates of his choice. Therefore, so far as all accused, other than Accused No.1 are concerned, it does not appear to be case of ACB that the said accused had any intention of committing any illegality by selecting a particular candidate of their own choice. The choice is of the First Accused. Thus, the main allegations about alleged irregularities in the selection process appears to be against Accused No.1. Except Accused No.3-Chand Dadasaheb Mulla, who functioned as Establishment Clerk in the office of Accused No.1, the allegation against all other Petitioners appears to be about their act in awarding additional marks to the concerned candidates either in the physical test or written examination. The allegations levelled against Petitioners in the charge-sheet have already been summarised in the preceding paragraph of the judgment. So far as allegations against Accused No.3-Chand Mulla are concerned, the same are being dealt with separately in the later portion of the judgment since the accusations levelled against him appear to be slightly different than the other set of Petitioners.

16) The prosecution agency has accused Petitioners of committing offences under Sections 13(1)(d) and 13(2) of the PC Act. Section 13 of the PC Act, as it applied prior to 2018 amendment, dealt with the offence of criminal misconduct by a public servant. Under Clause (d) of Sub Section 1 of Section 13, a public servant is said to have committed the offence of criminal misconduct if he obtains any valuable thing or pecuniary advantage by corrupt or illegal means. Section 13 as it applied prior to 2018 amendment read thus:-

13. Criminal misconduct by a public servant-(1)A public servant is said to commit the offence of criminal misconduct,-

- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
- (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or
- (d) if he,-
 - (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

17) Thus, for proving offence under Section 13(1)(d), the allegation of obtaining pecuniary advantage or valuable thing must be levelled and in absence of any such allegation, the offence under Section 13(1)(d) cannot be made out. In the present case perusal of the entire charge-sheet would indicate that there is no allegation of obtaining any pecuniary advantage by any of the Petitioners. There is neither any allegation nor evidence on record that any of the Petitioners either demanded or accepted any pecuniary advantage either for themselves or for any other person for committing the acts, which are alleged against them. This aspect has been noted by this Court while dealing with case of **Umaji Tolaram Pawar Versus. The State of Maharashtra**¹. In paragraph 12 of the judgment this Court has dealt with the issue as to whether the offence under Section 13(1)(d) and 13(2) of the PC Act can be said to be made out against Accused No.7. This Court held in paragraphs 12 and 13 as under:

12. The petitioner/accused No.7 is also sought to be charge-sheeted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the P.C.Act. Section 13(1)(d) of the P.C.Act read thus :

“Section 13(1) A public servant is said to commit the offence of criminal misconduct -

(a)

(b)

(c)

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or”

13. Section 13(2) of the P.C.Act provides for penalty for committing the offence of criminal misconduct by a public servant. For making a public servant liable for this penalty, it is required to be shown that the public servant by corrupt or illegal means or by abusing his position of a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage. Similarly, it is required to be shown that while

¹ Criminal Writ Petition No.3817 of 2014

holding the office as public servant, such public servant obtained any valuable thing or pecuniary advantage without any public interest. In the case in hand, the entire charge-sheet is not reflecting an iota of evidence to show that petitioner/accused No.7 had obtained any valuable thing or pecuniary advantage by abusing his position and by indulging in corrupt or illegal means. Statements of candidates, who appeared in the recruitment process are not reflecting this aspect of gaining or obtaining valuable thing or pecuniary advantage by the petitioner/accused No.7 in the recruitment process. It is not even shown that this petitioner/accused No.7 is even remotely connect with any of the selected candidate.

18) So far as the offences under the Indian Penal Code are concerned, Petitioners face allegations pertaining to offences under Sections 467, 468 and 471 in addition to the offence under Section 120-B IPC. Section 467 (Forgery of valuable security, will, etc.), Section 468 (Forgery for purpose of cheating) and Section 471 (using as genuine a forged document or electronic record) relate to 'forgery', which term is defined in Section 463 as under:-

463. Forgery.-

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

19) Section 464 deals with making of forged document or false electronic record and provides thus:

464. Making a false document.-

A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) *makes, signs, seals or executes a document or part of a document;*

(b) *makes or transmits any electronic record or part of any electronic record;*

(c) *affixes any electronic signature on any electronic record;*

(d) *makes any mark denoting the execution of a document or the authenticity of the electronic signature,*

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom

or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

20) For alleging the offences under Sections 467, 468 and 471, it is necessary that there must be an allegation of making a false document. It is sought to be suggested by Mr. Mundargi that for raising accusations of forgery, it is incumbent that a person must make some alteration in the document authored by another person and in the present case, the charge-sheet does not allege that the Petitioners have made any alterations or overwriting in the answer sheet corrected by other person or in marksheet of physical test prepared by some other person. In short, it is sought to be suggested that even if the allegation of award of excess marks is assumed to be correct, the said allegations still does not make out a case of forgery since such alterations /overwriting are ultimately made by the accused in respect of the documents authored by themselves. Mr. Mundargi does not appear to be correct in his submission in the light of second element of Section 464 under which a person altering his own document is also covered by Section 464 of the IPC. Therefore, merely because the alleged overwritings /corrections are said to have been made by the Petitioners, it cannot be stated *ipso facto* that the act of forgery cannot be presumed.

21) However, the issue here is that whether there is sufficient material on record for proving the act of forgery levelled against Petitioners. While deciding the prayer for discharge of Accused No.7 - Umaji Tolaram Pawar this Court has made following observations in paragraphs 9, 10 and 11:

9. Even according to the prosecution case, the petitioner/ accused No.7 is not concerned with the offences punishable under Sections 467, 468 and 471 of the Indian Penal Code. This fact is writ large from the averments against the petitioner/accused No.7 in the charge-sheet as well as in the Sanction Order. The learned Assistant Public Prosecutor has also not disputed this fact.

10 So far as conspiracy part of the case is concerned, the entire charge-sheet contains no evidence in that regard against the petitioner/accused No.7. Meeting of minds of two or more persons for doing an illegal act or an legal act by illegal means is sine qua non for the criminal conspiracy. It may not be possible to prove such agreement by direct proof. However, existence of conspiracy and its objectives can be inferred from the surrounding circumstances and conduct of the accused. However, the incriminating circumstances must form a chain of events from which a conclusion about indulgence in criminal conspiracy can be drawn. On behalf of petitioner, reliance is rightly placed on Judgment of the Honourable Apex Court in the matter of Central Bureau of Investigation, Hyderabad versus K.Narayana Rao, (2012) 9 SCC 512 Paragraphs 24, 25 and 26 of that Judgment needs reproduction and those read thus :

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

25. In the earlier part of our order, first we have noted that the respondent was not named in the FIR and then we extracted the relevant portions from the charge-sheet about his alleged role. Though statements of several witnesses have been enclosed

along with the charge- sheet, they speak volumes about others. However, there is no specific reference to the role of the present respondent along with the main conspirators.

26. The High Court while quashing the criminal proceedings in respect of the respondent herein has gone into the allegations in the charge sheet and the materials placed for his scrutiny and arrived at a conclusion that the same does not disclose any criminal offence committed by him. It also concluded that there is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of direct material, he cannot be implicated as one of the conspirators of the offence punishable under Section 420 read with Section 109 of IPC. The High Court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by him. Though as pointed out earlier, a roving enquiry is not needed, however, it is the duty of the Court to find out whether any prima facie material available against the person who has charged with an offence under Section 420 read with Section 109 of IPC.”

11. In absence of any evidence against the petitioner/accused No.7, in the instant case, merely on the basis of suspicion, surmises or inferences, it cannot be said that he had indulged in criminal conspiracy for committing several offences during the recruitment process of Jail Sepoy in the year 2005. No material is found in the charge-sheet to show that the petitioner/accused No.7 had joined hands with other accused persons for giving excess marks in viva-voce test to 28 candidates mentioned in the charge-sheet. Not a single circumstance indicating meeting of minds between the petitioner/accused No.7 and other accused persons for the intended object of getting ineligible candidates selected for the post of Jail Sepoy is pointed out in the charge-sheet. Even remotely it is not possible to suggest from the material collected by the Investigator that there was transmission of thoughts or sharing of the unlawful design by the petitioner/accused No.7. According to the learned Counsel for the petitioner, the petitioner had joined the post of the Superintendent, Yerwada Prison on promotion just at the beginning of the viva-voce test and as such he was included as the member of the Interview Committee.

22) Perusal of various statements placed on record would indicate that statements of various candidates, who participated in the selection process are recorded by the Investigating Officer. The said statements are sought to be relied upon for the purpose of making out a case that the concerned candidate did not deserve to be awarded marks, which are actually awarded by the concerned accused. However, as held above, so far as Petitioners are concerned, there is no allegation of offer or acceptance of any pecuniary benefit for commission of the acts, which are accused against them.

23) For limited purpose of sifting and weighing the evidence for examining existence of sufficient material to raise grave suspicion against Petitioners, I proceed to examine the evidence that is sought to be relied upon for prosecution of each of the Petitioners:

(i) Accused No.5-Shivaji Tatyaba Markad (Writ Petition No.5486 of 2021) :

He faces the allegation of increase by 5 marks for attribute of '3 km walking' in respect of candidate with Chest No. 5235 as she had secured 23 marks which were less than qualifying 24 marks in physical test. The said charge is sought to be proved only on the basis of statement of Smt. Swati Laxman Dongre, the candidate herself, who is apparently shown the marksheet for physical test and she has stated that her marks have been increased in the attribute of '3 km walking'. Also sought to be relied upon is the sheet on which marks are awarded in physical test showing that the time for completing 3 km is reduced from 26 mins to 25 min and marks are increased from 14 to 19. Both the corrections bear the signature of the same officer who gave the original marks, which according to ACB is Petitioner himself. Except these two documents, there is no other evidence for proving the charge levelled against Accused No.5.

(ii) Accused No.6-Vaibhav S/o Sahebrao Kamble (Writ Petition No.3175 of 2021) :

He is accused of committing illegalities in respect of 3 candidates. For candidate with Chest No. 5070, he made correction against attribute of shotput and increased 2 marks. Similar is the allegation in respect of Candidate with Chest No. 4158. For candidate bearing Chest No. 4410,

allegation is that he himself made alteration in answers in the written test and gave 7 extra marks for essay of extremely ordinary quality.

To prove the above charges, statements of all the three candidates are relied upon. Additionally, for candidate bearing Chest No.5070 the marksheet for physical test is relied upon showing some overwritings against attribute of shotput. In respect of candidate bearing Chest No. 4158 also, his marksheet for physical test is relied upon with overwritings in marks awarded for the attribute of shotput. In respect of candidate bearing Chest No. 4410, his marksheet for physical test is relied upon which does not show any overwriting. His answer sheet in written test is also relied upon, which shows numerous tick marks against various answers as well as award of 12 marks for essay. It is incomprehensible as to how any criminal act can be alleged if invigilator awards particular marks to the subjective type question. So far as written examination is concerned, candidate's statement is recorded that he ought to have been awarded 5 marks for the essay and is actually awarded 12 marks. Here again, how candidate's opinion about his own marks about essay extracted by police officer could help prosecution in securing accused's conviction is unfathomable. The candidate has also stated that though he had tick marked particular answers, additional tick marks are made against other options for the purpose of award of marks. Perusal of above material would show that the prosecution agency is relying on only mark sheets for physical examination and answer sheet of one candidate in addition to statements of each of concerned candidates for proving the

charge. The material, in my view, is not sufficient to maintain prosecution against the Petitioner.

(iii) Accused No.9-Sanjay Laxman Kulkarni (Writ Petition No.5416 of 2021) :

He is accused of awarding 4 additional marks to candidate with Chest No. 2635 against attribute of '800m Running' by making overwriting in the result of physical test.

To prove the charge, what is relied upon is statement of the concerned candidate bearing Chest No. 2635 and the sheet of award of marks for physical test showing alteration of marks against the attribute of '800m Running' by changing the time from 3.05 mins to 2.45 mins and by increasing the marks from 8 to 12. Additionally, statement of Anand Baburao Patil working as Deputy Secretary, in Agriculture Department is relied upon to prove recommendation by the concerned witness to Accused No.1 for appointment of Ashok Dhumal. However, the statement reflects clear instructions by the witness to Accused No.1 not to select the candidate if his case was not fitting into the Rules.

In my view, the above evidence is grossly insufficient to bring home the charges against Accused No.9.

(iv) Accused No.10-Anand Laxman Gavandi (Vadar) (Writ Petition No.5574 of 2021) :

He is accused of award of 2 additional marks by making overwriting against 'long jump' criteria of physical test of candidate with Chest No. 4158.

To prove the charge, ACB has relied upon statement of concerned candidate Amar Bapu Satav and the sheet of

award of marks in physical test showing changing 6 marks against 'long jump' to 8 marks.

Apart from the said two documents, no other material is produced in support of the charge which, to my mind, appears to be insufficient for raising gross suspicion.

(v) Accused No.13-Ganesh Amrut Mankar (Writ Petition No.531 of 2021) :

He is accused of awarding 28 additional marks to candidate with Chest No. 4108 after Accused No.4-Yogesh Desai called for the candidate's answer sheet and handed it over to Petitioner for rechecking.

To prove the charge, statement of concerned candidate Namdeo Raju Rathod is relied upon. Additionally, answer sheet of the said candidate is also relied upon. Except the above material, no other evidence is sought to be produced for proof of the charge.

(vi) Accused No.15-Digambar Shivaji Igave (Writ Petition No.5057 of 2022) :

He is accused of award of 16 and 4 additional marks to candidate with Chest Nos. 4181 and 2903 respectively after Accused No.4-Yogesh Desai called for the answer sheets of said candidates and handed it over to the Petitioner for rechecking.

To prove the charge, statements of the concerned two candidates Gajram Bhausaheb Shinde and Nyaneshwar Dinkar Raut are relied upon in addition to the answer sheets of both the candidates. Except the above material, nothing more is collected during course of investigations to prove the charges levelled against the Petitioner.

(vii) Accused No.16-Santosh Bhimashankar Kokane (Writ Petition No.3120 of 2022) :

He is accused of awarding marks to candidates with Chest Nos. 5285, 5235 and 5432 by making alterations in answers of their answer sheets.

To prove the charge, statements of the 3 concerned Candidates- Swati Laxman Dongre, Manisha Nivrutti Gudekar and Vijanti Nyandev Bhosale alongwith their answer sheets is sought to be relied upon. Thus, except statements of concerned candidates made on the basis of observations in the marksheets, no other piece of evidence is sought to be relied upon.

(viii) Accused No.4-Yogesh Dattatray Desai (Writ Petition No. 1410-2020) :

He is accused of finding out exact officials to whom answer sheets were allotted for checking and increasing the marks of candidates bearing Chest Nos. 5070, 4594, 4139, 3311 and 2909 and getting the marks of four other candidates bearing Chest Nos. 4108, 4137, 2903 and 4181 from Accused Nos.13, 14 and 15.

To prove the charges, statements of concerned nine candidates alongwith their answer sheets are sought to be relied upon. Perusal of the statements made by the concerned candidates would indicate that the statements made by them are based on their own observations after being shown their respective answer sheets.

Except producing statements of candidates and answer sheets, no other material exists on record to prove the charges against Accused No.4.

(ix) Accused No.3-Chand Dadasaheb Mulla (Writ Petition No.5482-2021) :

He is accused of following acts:

- i) not deliberately maintaining office notings relating to selection process with a view to hide irregularities committed by various officials though he was supposed to prepare such office notes reflecting information relating to decisions taken on various stages of selection process, allotment of responsibilities to various officials by presenting the same through Accused No.2 for passing orders by Accused No.1.
- ii) For hiding the exact number of vacant posts, he deliberately indicated imaginary vacancy positions by advertising varying number of vacancies in different advertisements.
- iii) He allowed ineligible candidates with Chest Nos. 4117, 5070, 5257 and 5246 by adjudging them eligible and not only permitted them to participate in further selection process but finally selected them by increasing their marks. Out of the said candidates, three candidates with Chest Nos. 5070, 5257 and 5246 were not fulfilling the eligibility criteria, but he himself, and through aid of Accused No.2, got the eligibility of said candidates fulfilled.
- iv) Despite having responsibility of scrupulously following Government orders and circulars for conducting selection and for preparation of merit list through Accused No.1, he conspired with the said Accused and aided him in preparing merit list and

select list in high handed manner for appointing candidates of choice,

v) despite having responsibility of making Accused No.1 aware of instructions relating to waiting list and to prepare waiting list accordingly he conspired with Accused No.1 by aiding him to prepare waiting list in high handed manner. Despite knowledge of the fact that waiting list cannot be prepared in respect of vacancies arising in future, he presented note for grant of appointment to candidates from waiting list against vacancy arising in future.

To prove the above charges, ACB has sought to rely upon statements of Nynadev Kishan Gawhane, senior clerk in the office of Prison Deputy Inspector General (Western) Region, Yerwada, Pune who has made various statements on eligibility of some of the candidates and few overwritings made in envelopes and application forms. The statement however does not reflect an allegation of Accused No.3 personally making any changes in the concerned records.

The allegations essentially relate to failure to scrupulously follow various Government orders and instructions. However there appears to be no material on record to *prima facie* indicate that Accused No.3 had hatched a conspiracy by holding any meeting with Accused Nos. 1 and 2 for commission of various acts. Even if it is assumed that there are some abrasions in the matter of conduct of the selection process, it really becomes questionable as to whether sufficient material is available to prosecute third accused for the charge of forgery and criminal conspiracy. As observed

above, there is absolutely no material in support of charges under Section 13(1)(d) and Section 13(2) of the P.C. Act. In my view therefore though flavour of serious nature is sought to attached to the accusations levelled against Accused No.3, there appears to be insufficient material to secure his conviction in respect of any of the allegations levelled against him.

24) It is settled position of law that at the stage of considering an application for discharge the Court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. A quick reference to the recent judgment of the Apex Court in ***State of Gujrat Vs. Dilipsinh Kishorshinh Rao***² would be apposite. By referring to judgments in ***State of Tamil Nadu v. N. Suresh Rajan***³, ***State of Maharashtra v. Som Nath Thapa***⁴ and ***the State of MP v. Mohan Lal Soni***⁵, the Apex Court has held as under:

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in ***State of Tamil Nadu Vs. N. Suresh Rajan And Others*** (2014) 11 SCC 709 advertent to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for dis-

² 2023 SCCOnline SC 1294

³ (2014) 11 SCC 709

⁴ (1996) 4 SCC 659

⁵ (2000) 6 SCC 338

charge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the **State of Maharashtra v. Som Nath Thapa**, (1996) 4 SCC 659 and **the State of MP v. Mohan Lal Soni**, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

25) I therefore proceed on the footing that the material brought on record by ACB is true to evaluate whether the facts emerging from such material make out the ingredients necessary for proving the offences alleged against Petitioners.

26) After having sifted and weighed through the evidence on record sought to be produced against each of the accused who are Petitioners before me, it is seen that the charges levelled against them are sought to be proved by relying upon mainly the statements of concerned candidates. Perusal of said statements would indicate that the concerned candidates were shown their respective answer sheets or the sheet on which marks are awarded to them in physical test and what allegedly appeared to the said candidates to their naked eyes, is reflected in their respective statements. To give an illustration, if there is any overwriting in respect of marks awarded against any particular attributes in the physical test, the concerned candidate's statement is recorded that he/she can see the said overwriting for the purpose of award of additional marks. Similarly in the cases involving award of additional marks in answer sheets for written test, the concerned candidates have made statements that there are overwritings in the answer sheets by tick marking additional options than the one originally made by him/her. Even if it is assumed that the said overwriting and corrections in marksheet for physical test as well as in the answer sheets are actually done, there appears to be no evidence on record to suggest that the same is done by Petitioners, that they had any oblique motive in doing so and most importantly, that they received any pecuniary advantage for themselves or for any other accused. In my view, therefore the only material in the form of statements of candidates and their respective answer sheets/marksheets for physical test is grossly insufficient for securing conviction of Petitioners in the case at hand.

27) Considering the material on record it is difficult to hold that inference of grave suspicion can be raised against the Petitioners on the basis of evidence on record. The material appears to be grossly insufficient for subjecting the Petitioners to trial. On the basis of

evidence on record, it cannot be stated *prima facie* that prosecution will be able to secure conviction of Petitioners. Subjecting Petitioners to trial would not only be a mere formality, but an abuse of process of law. The learned Special Judge ought to have appreciated this position while deciding the application for discharge. The learned Special Judge failed to appreciate that there are no allegations of abusing of position of public servant by any of the Petitioners and obtaining valuable thing or pecuniary advantage. Despite lack of any allegation in the charge-sheet about securing such valuable thing or pecuniary advantage, the learned Special Judge has erroneously held that the accused have obtained valuable thing or pecuniary advantage for particular candidates for their selection in the recruitment process. The findings of the learned Special Judge are thus perverse. The learned Judge has erroneously held that police papers *prima facie* show the alleged criminal conspiracy hatched by the accused. The learned Judge failed to appreciate that there is no *iota* of material to suggest meeting of minds between the accused for hatching any criminal conspiracy. The learned Judge has sought to discuss roles of each of the accused in paragraph 16 of his order without appreciating the fact that beyond the statements of concerned candidates and answer sheets /mark sheets, there is absolutely no evidence to prove the facts alleged against the Petitioner in the charge-sheet. Therefore, even if it is assumed that the entire material collected by the prosecution is true, it is not possible to hold that the prosecuting agency would be in a position to secure conviction of Petitioners on the basis of the said material. Since there is no material to suggest even remote connection of Petitioners with commission of any of the offences alleged, conduct of trial against the Petitioners would be nothing but an empty formality. I am therefore of the view that the impugned order of the learned Special Judge suffers from the vice of perversity and the same being indefensible, is liable to be set aside.

28) It also needs to be borne in mind that Accused No. 7 is already discharged by this Court, who was the Secretary of the Selection Committee and faced similar allegations of awarding additional marks to the candidates, in absence of any allegation of obtaining any pecuniary advantage or valuable thing.

29) Writ Petitions accordingly succeed. The impugned order dated 30 August 2014 passed by the learned Special Judge *qua* the Petitioners is set aside and Petitioners are discharged in Special Case No.11 of 2010.

30) Writ Petitions are **allowed** in above terms by making the rule absolute.

[SANDEEP V. MARNE, J.]

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