

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2618 OF 2022

**KESHAV DASHARATRAO WAPATKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. M. S. Deshmukh, Advocate for the applicants
Mr. A. R. Kale, APP for the respondent/State
Mr. D. K. Dagadkhair, Advocate for respondent No.3

WITH
CRIMINAL APPLICATION NO. 3220 OF 2022

**DIGAMBAR S/O RAOSAHEB SHELKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. G. G. Kadam, Advocate for the applicants
Mr. A. R. Kale, APP for the respondent/State
Mr. D. K. Dagadkhair, Advocate for respondent No.3

WITH
CRIMINAL APPLICATION NO. 2620 OF 2022

**RANGRAO S/O SHAMRAO BARSE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. S. S. Thombre, Advocate for the applicants
Mr. A. R. Kale, APP for the respondent/State
Mr. D. K. Dagadkhair, Advocate for respondent No.2

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

RESERVED ON : 23rd JANUARY, 2023

PRONOUNCED ON : 3rd MAY, 2023

PER COURT (PER- R. M. JOSHI, J.):-

1. These applications are filed under Section 482 of Cr.P.C. for

quashment of order directing investigation under Section 156(3) of Cr.P.C. passed in O.M.C.A. No. 26/2022 by learned JMFC, Ardhapur, Dist. Nanded and consequential registration of the First Information Report bearing C.R. No. 199/2022 with Ardhapur Police Station, Tq. Ardhapur, Dist. Nanded for the offences punishable under Sections 166, 406, 420, 464, 465, 467, 468, 471 read with 34 of the IPC.

2. The Applicants are permanent Primary teachers working in schools run by Zilla Parishad, Nanded. In the year 2019 the Government issued a Resolution whereunder Gramsevaks and teachers were required to reside at the headquarter in order to claim house rent allowance. Respondent No.2 who is a Social Worker lodged a complaint before the Magistrate seeking direction under Section 156(3) of Cr.P.C. for registration of offence against the teachers on the ground that in defiance of the Government Resolution dated 09/09/2019, the applicants, who were not residing in the head quarters, have received house rent allowance by submitting bogus pay bills to the superiors. In this regard a complaint was made by the respondent No.2 to the Block Development Officer on 11/12/2019, however, no action was taken and therefore complaint came to be lodged before the learned Magistrate, pursuant to which order was passed under Section 156(3) of the Cr.P.C. for registration of the First Information Report.

3. Learned counsel for the applicants states that even if the allegations in the First Information Report are accepted in toto, no offence is made out against the applicants. According to him the applicants are teachers and they are not responsible for preparation or submission of the pay bills. Thus the allegations of preparing and submitting false or bogus pay bills to the superiors is without any basis. In this regard learned Counsel for the Applicant drew attention of the Court to the communication indicating that no meeting was held by Gramsabha on account of Covid-19 pandemic. It is also argued that undertaking is obtained from the teachers for refund of the amount paid to them and hence at the most the liability of the applicants would be to return the amount. The allegations in the FIR do not disclose essential ingredients of the offence alleged against them.

4. Learned counsel for respondent No.3 and learned APP state that the G.R. dt. 09/09/2019 stipulates that the teachers and Gramsevak who are not residing in the headquarters would not be entitled for HRA and it was mandatory for them to produce the certificate of Gramsabha in order to claim the HRA. They submit that the applicants were not residing in the Headquarters and that they have drawn HRA on the basis of bogus representation to the superiors about their stay at the headquarters. Hence there is prima facie material on record to prove their involvement in the crime.

5. It is not in dispute that none of the applicants are actually responsible for disbursement of salary nor are they required to prepare the pay bill in order to submit the same for its approval. In view of the fact, there is no question of the applicants forging the pay bill or preparing any false documents and committing forgery as defined under Section 463 of IPC. In the absence of essential ingredients of forgery, provisions under Sections 465, 467, 468 and 471 of IPC would not be attracted. As regards offence punishable under Section 406 IPC is concerned, the complaint does not disclose the essential ingredients of criminal breach of trust, as defined under Section 405 of IPC. Similarly, in order to constitute offence of cheating within the meaning of Section 415 of IPC, there should be inducement or fraudulent or dishonest delivery of any property to them. The sine qua non of Section 415 of IPC is the fraudulent, dishonest intention and inducement. In the present case all these three ingredients are conspicuously absent.

6. It is pertinent to note that the communication of the State Government reveals that submission of certificate of Gramsabha was exempted since meetings could not be conducted due to outbreak of Covid-19 pandemic. Similarly, undertakings have been obtained from the concerned teachers and specific directions have been issued for recovery of the undue amount paid to similarly placed employees. In

such circumstances, the First Information Report and material on record do not disclose any cognizable offence against present applicants.

7. In case of ***State of Haryana and Others Vs. Bhajan Lal and Others*** reported in ***(1992) Supp (1) SCC 335***, wherein, the Court made it clear that it is not possible to lay down any precise inflexible guidelines but by way illustrations gave following categories wherein such powers could be exercised,

1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. The present case is fully covered by clauses 1 and 3 of the decision in Bhajanlal (supra). Hence the applications are allowed. The O.M.C.A. No. 26/2022 by learned JMFC, Ardhapur, Dist. Nanded and consequential First Informant Report bearing C.R. No. 199/2022 registered with Ardhapur Police Station, Tq. Ardhapur, Dist. Nanded for the offences punishable under Sections 166, 406, 420, 464, 465, 467, 468, 471 read with 34 of the IPC is hereby quashed and set aside.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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