

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

CRIMINAL REVISION APPLICATION NO. 491 OF 2017

Vijay Balaso Bhogam
Head Master of Susankar High School
Bhosalewadi,
Age:43 years, occup. Service R/o at Kadamwadi,
Bhosalewadi, District Kolhapur **Applicant.**

Versus

1. Prashant Rajaram Dhanavade
Age: Adult, Occup. Rickshaw Driver
2. Sunita Prashant Dhanavade
Age: Adult, Occup. Household,
Both residing at 192 E Ward
Sadar Bazar, District Kolhapur
3. State of Maharashtra **Non-applicants.**

Mr. Chetan G. Patil a/w Mr. Prathamesh P. Magadum, Counsel for the Applicant.

Ms. Vanshika Joshiee a/w Mr. Indrajeet Joshiee, Counsel for the non-applicants Nos. 1 and 2.

Mr S.V. Gavand, APP for the Respondent No. 3 - State.

CORAM: MRS. VRUSHALI V. JOSHI, J.

Judgment reserved on: 19.06.2026

Judgment delivered on: 10.07.2026

JUDGMENT:

1) Being aggrieved by the Judgment and Order dated 17.07.2017 passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Revision Application No. 10 of 2015, whereby the order dated 09.01.2015 passed by the Chief Judicial Magistrate, Kolhapur, issuing process against Non-Applicant Nos.1 and 2 for the offences punishable under Sections 465, 468, and 471 read with Section 34 of the Indian Penal Code was set aside, the applicant–original complainant has preferred the present Criminal Revision Application.

2) The applicant was serving as the Head Master of Susanskar High School, Bhoslewadi, Kolhapur. Respondent Nos. 1 and 2 were employed in the said school as a temporary clerk and a teacher, respectively, during the academic years 1999–2000, 2000–2001, 2001–2002, and 2002–2003. Respondent Nos. 1 and 2 contracted a love marriage. They thereafter remained absent from duty without obtaining leave and have since then not been in the service of the said High School. Subsequently, Respondent No. 2 filed Appeal No. 54 of 2008 before the School Tribunal, Kolhapur. It is

alleged that Respondent Nos. 1 and 2 forged the letterhead and rubber stamp of the High School, prepared a fabricated document, and forged the signature of the applicant with a view to securing an undue advantage in the said proceedings. Alleging the commission of offences of forgery and use of forged documents, the applicant instituted Regular Criminal Case No. 1122 of 2011 before the Chief Judicial Magistrate, Kolhapur.

3) After receipt of the complaint, the learned Chief Judicial Magistrate (CJM) directed an inquiry under Section 202 of the Code of Criminal Procedure, 1973. Pursuant thereto, the Investigating Officer submitted a report opining that the disputed letterhead and signature were forged. Upon considering the complaint, the documents placed on record, and the report submitted pursuant to the inquiry under Section 202 of the Code, the learned CJM, by an order dated 09.01.2015, found that a *prima facie* case was made out and accordingly issued process against Non-Applicant Nos. 1 and 2 for the offences punishable under Sections 465, 468, and 471 read with Section 34 of the Indian Penal Code. Non-Applicant Nos.1 and 2 challenged the said order, before the learned Additional Sessions

Judge, Kolhapur, in Criminal Revision Application No. 10 of 2015. By judgment and order dated 17.07.2017, the learned Additional Sessions Judge allowed the revision application and set aside the order issuing process. The learned counsel for the revision applicant submitted that the impugned judgment and order dated 17.07.2017 passed by the learned Additional Sessions Judge, Kolhapur, is contrary to the settled principles governing the issuance of process and, therefore, deserves to be quashed and set aside.

4) It is argued that the learned Chief Judicial Magistrate (CJM) issued process after considering the report submitted by the police pursuant to the inquiry under Section 202 of the Code of Criminal Procedure, 1973, wherein it was specifically opined that the disputed letterhead and the signature appearing thereon were forged. The learned counsel for the revision applicant further submitted that the learned Additional Sessions Judge exceeded the limited scope of revisional jurisdiction by undertaking a detailed examination of the merits of the allegations and the sufficiency of the evidence at the pre-trial stage, which was impermissible in law.

5) It was contended that, at the stage of issuance of process,

the Court is only required to ascertain whether the complaint and the material placed on record disclose a *prima facie* commission of an offence and not to adjudicate upon the truthfulness or otherwise of the allegations. It was submitted that the complainant had specifically alleged the commission of offences punishable under Sections 465, 468, and 471 of the Indian Penal Code, and that the order dated 09.01.2015 issuing process was principally for the offence punishable under Section 468 of the Indian Penal Code. Consequently, the embargo contained in Section 195 of the Code of Criminal Procedure, 1973, was not attracted in the facts and circumstances of the present case. It was further submitted that the impugned judgment itself records inconsistent findings since while holding that Section 195 bars the prosecution. It simultaneously observes that there is no finding that the disputed document had been produced before the School Tribunal in Appeal No. 54 of 2008.

6) Learned counsel submitted that the complaint clearly discloses that Respondent Nos. 1 and 2, acting in furtherance of their common intention, prepared a forged letterhead and rubber stamp of Susanskar High School and fabricated a document by forging the

applicant's signature with a view to securing an undue advantage in the proceedings before the School Tribunal. It was, therefore, contended that the learned Magistrate had rightly exercised jurisdiction in issuing process by order dated 09.01.2015, and that the learned Additional Sessions Judge committed a jurisdictional error in setting aside the said order by the impugned judgment dated 17.07.2017, despite there being no perversity, illegality, or material irregularity in the order passed by the learned Magistrate.

7) The learned counsel for Non-Applicant Nos. 1 and 2 supported the impugned judgment and order passed by the learned Additional Sessions Judge and prayed for dismissal of the present Criminal Revision Application.

8) Heard both the counsel.

9) Upon considering the judgment and order passed by the learned Additional Sessions Judge, it is evident that the revision application was allowed solely on the ground that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, was attracted. The question that, therefore, arises for consideration is

whether the learned Additional Sessions Judge was justified in invoking the bar under Section 195(1)(b)(ii) of the Code to set aside the order dated 09.01.2015 issuing process, particularly when the alleged forgery was committed prior to the production of the disputed document before the School Tribunal.

10) Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, bars a criminal court from taking cognizance of any offence described in Section 463 or punishable under Sections 471, 475, and 476 of the Indian Penal Code, which is reproduced as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a)

(b) (i)

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

11) Except upon a complaint in writing made by the Court concerned, no prosecution shall lie for such offences where they are

alleged to have been committed in respect of a document produced or given in evidence in proceedings before that Court. This provision constitutes an exception to the general rule that any person aggrieved by the commission of an offence may institute criminal proceedings. Being an exception that restricts the ordinary right to prosecute, the provision must be construed strictly.

12) In the present case, the complainant came to know about the alleged forgery only when the disputed documents were produced before the School Tribunal. Until then, the complainant had no knowledge of the forgery and, therefore, the question of delay does not arise.

13) The legal position on this issue stands authoritatively settled by the Constitution Bench of the Hon'ble Supreme Court in ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another, (2005) 4 SCC 370***, wherein it was held that Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, applies only where the offence relating to a document is committed after the document has been produced or given in evidence before a Court, that is, while it is *custodia legis*. Where the act of forgery is complete prior to the

production of the document before a judicial forum, a private complaint by the aggrieved person is maintainable, and the Magistrate is competent to take cognisance of the offence. The Constitution Bench also approved the earlier decision in ***Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493.***

14) The complainant has also placed reliance on the judgment of this Court in ***Vishwambhar Ghanshyam Ban v. State of Maharashtra and Others, 2007 ALL MR (Cri.) 197,*** wherein this Court, while relying upon the Constitution Bench decision in ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another (supra)***, reiterated that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, is attracted only where the alleged offence of forgery is committed after the document has been produced or given in evidence before a Court.

15) In the present case, the specific allegation of the applicant is that Non-Applciant Nos. 1 and 2 forged the school letterhead, fabricated the rubber stamp, and forged the applicant's signature before using the said document in Appeal No. 54 of 2008 before the School Tribunal. Thereafter, the applicant instituted

Regular Criminal Case No.1122 of 2011. Pursuant to an inquiry under Section 202 of the Code of Criminal Procedure, 1973, the learned Chief Judicial Magistrate, by an order dated 09.01.2015, issued process after recording a *prima facie* satisfaction that offences punishable under Sections 465, 468, and 471 read with Section 34 of the Indian Penal Code were made out.

16) *Prima facie*, therefore, the alleged act of forgery was complete prior to the production of the disputed document before the School Tribunal. Applying the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another*** (*supra*), the embargo contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure would not be attracted, and the learned Magistrate was competent to entertain the complaint and issue process. Consequently, the correctness of the impugned judgment and order dated 17.07.2017, whereby the learned Additional Sessions Judge set aside the order issuing process solely by invoking the bar under Section 195(1)(b)(ii) of the Code, requires examination in the light of the binding law declared by the Hon'ble Supreme Court.

17) In view of the facts and legal position stated above, the Revision Application is allowed. The order dated 09/01/2015 passed by the learned Chief Judicial Magistrate in RCC No.1122 of 2011 is confirmed, and the order dated 17/07/2017 passed by the learned Additional Sessions Judge in Criminal Revision Application No.10 of 2015 is hereby quashed and set aside.

18) RCC No.1122 of 2011 be restored to its original file.

19) The Non-applicant Nos.1 and 2 are directed to appear before the learned Chief Judicial Magistrate, Kolhapur on 24/07/2026.

20) Criminal Revision Application stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)