

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 393 OF 2014**

Deepak Dilip Khivasara
Age : years, Occ : Chartered Accountant,
R/o 16, Hari Om Empire,
Near State Bank of Mysore,
Gokhale Nagar Road, Model Colony,
Pune.

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Vinodkumar Shantilal Jain
Age : 65 years, Occ : Business,
R/o Kasat Chowk, Bhadgaon,
Dist. Jalgaon.

..RESPONDENTS

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Advocate for Applicant : Mr. S.P. Shah
APP for Respondent/State : Mr. A.V. Deshmukh
Advocate for Respondent no.2 : Mr. Abhay Ostwal

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.

Dated: June 23, 2015

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ORAL JUDGMENT (PER S.S. SHINDE, J):-

Rule. Rule made returnable forthwith and
heard finally by consent of the learned counsel
appearing for the parties.

2. This application is filed praying therein for quashing and setting aside the F.I.R. bearing C.R. No. 188/2013 registered with Pachora Police Station against the applicant.

3. The learned counsel appearing for the applicant submits that, the applicant was appointed as Auditor on 19th May, 2012 and as a matter of fact, on 29th May, 2012 he has accepted the appointment. It is submitted that, even if the allegations made in the First Information Report are taken at its face value and read in its entirety, no offence is disclosed as against the applicant. It is submitted that, so far allegation of preparation of forged record of service of Agenda on the complainant is concerned, the said allegations may be attributed against the co-accused, since those relates to period prior to the meeting dated 17th February, 2012 and 31st March, 2012. At the cost of repetition, the learned counsel appearing for the applicant submits that, when the applicant was appointed first time as

Auditor on 19th May, 2012 and accepted said appointment w.e.f. from 29th May, 2012, by no stretch of imagination, allegations can be attributed against the applicant that, he was involved in the preparation of service of Agenda showing prior date, though it was served on the complainant on 15th February, 2012 as alleged in the complaint. It is submitted that, even if the allegations made in the First Information Report are taken as it is, at the most the applicant has mentioned that, the complainant was not present for four consecutive meetings. Therefore, according to the learned counsel appearing for the applicant the application deserves to be allowed. He further submits that, on the same set of allegations, which are in the First Information Report, the complaint was filed by the complainant before District Deputy Registrar (Co-operative Societies), Jalgaon and said authority disposed of the said complaint and the applicant is exonerated.

4. On the other hand the learned counsel appearing for the original complainant invited our attention to the allegations made in the First Information Report and, in particular, the letter written by the Manager, Pachora Peoples Co-operative Bank Ltd., Pachora, Dist. Jalgaon to the District Deputy Registrar, wherein the reference is made to the Audit report of the year 2011-2012, in which the applicant did mention that, the complainant was not present for four consecutive meetings of the committee. It is submitted that, the applicant and other co-accused conspired with each other and as a result, false report is prepared that, the complainant was absent for four consecutive meetings. It is submitted that, as a matter of fact, in one of the said meetings the complainant was present. Therefore, relying upon the allegations in the First Information Report, the affidavit in reply and annexures thereto, the learned counsel appearing for the original complainant submits that, the application may be rejected.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicant, the learned counsel appearing for the original complainant and the learned Additional Public Prosecutor for the State. With their able assistance, we have perused the allegations in the First Information Report, annexures to the application and all other documents placed on record. Upon careful perusal of the allegations in the First Information Report/complaint, what can be attributed to the applicant is that, the applicant did mention in his audit report that, complainant was not present for four consecutive meetings of the Board of Directors. It is not in dispute that, the applicant was appointed on 19th May, 2012, and he accepted the said appointment on 29th May, 2012. We find considerable force in the arguments of the learned counsel appearing for the applicant that, the Manager of the concerned society submitted the report for audit, wherein it was

mentioned that, the complainant was absent for four consecutive meetings of the Board of Directors. Even if, it is assumed for a moment that, the applicant did mention in the report that, the complainant was absent for four consecutive meetings contrary to record, that act itself would not attract the criminality.

6. Upon reading the allegations in the First Information Report, it appears that, the complainant is aggrieved by the act of other co-accused, who allegedly prepared the service report of Agenda, which was shown as served upon the complainant prior to 15th February, 2012, though the same was received by the complainant on 15th February, 2012. Therefore, applying the tests laid down by the Hon'ble Supreme Court in the case of "*State of Haryana V/s Bhajanlal*"¹, in our opinion, even if the allegations made in the First Information Report are taken at its face value and read in its entirety, no offence is disclosed as against the present applicant. Hence, the F.I.R. bearing C.R. No.

1 AIR 1992 SC 604

188/2013 registered with Pachora Police Station confined to the applicant stands quashed and set aside. Consequently, further proceedings, if any, based upon the said First Information Report qua the applicant stands quashed and set aside.

7. Rule made absolute to the above extent. Application stands disposed of accordingly.

8. Needless to observe that, so far as other accused are concerned, this Court has not expressed any opinion about the allegations made against them.

Sd/-
(**A. I. S. CHEEMA, J.**)

Sd/-
(**S.S. SHINDE, J.**)

sga/-

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