

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 645 OF 2014

1. Syed Sardar s/o. Syed Abdulla,
Age 49 years, Occu. Service,
R/o. Yusufiya Colony, Parbhani,
Dist. Parbhani.
2. Syed Khalendar s/o. Syed Abdulla,
Age 57 years, Occu. Labour,
R/o. Roshan Mohalla, Palam,
Tq. Palam, Dist. Parbhani.

....Applicants.

Versus

1. The State of Maharashtra
Through P.I. Nanal Peth,
Police Station, Parbhani.
2. Syed Jeelani Shah s/o. Syed Nade Ali,
Age 70 years, Occu. Pensioner,
R/o. Sha-Inayat Mohalla,
Dist. Parbhani.

....Respondents.

Mr. S.S. Kazi, Advocate for applicants.

Mr. V.D. Godbharle, APP for State.

Mr. Shaikh Mazhar A. Zahagirdar, Advocate for respondent No.2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 23rd March, 2015.

ORDER :

1. The petition is filed under Section 482 of Criminal
Procedure Code for quashing of FIR bearing C.R. No.239/13

registered in Nanal Peth Police Station, District Parbhani for the offences punishable under Sections 420, 468, 471 and 34 of Indian Penal Code. Both the sides are heard.

2. The crime is registered on the basis of report given by present respondent No.2. He has contended that his forefathers were Inamadars in respect of land survey No.11 from Parbhani and this land was given for rendering services to Darga and Masjid of Shah Innayat Kalandar. It is his case that applicants are not from his family and they are not descendants of his predecessor-in-title. It is contended that to grab the property and to claim rights in respect of management of Darga and Masjid, the present applicants have created false record.

3. Allegations are made that name of father of applicant was Sayyed Abdulla Sayyed Ahemad, but the applicants created false record of marriage to show that the name of their father was Sayyed Abdulla Nabi Shah. It is contended that in support of this record, even affidavit of Kazi was filed. Allegations are made that in the birth register of Manvat Nagar Parishad, when the name of applicant No.1 was mentioned in the year 1965, some over writing was done and erasing was done and the name of father of applicants was

mentioned as Abdulla Nabbi Shah, caste - Madari. It is contended that in the past, the name was recorded as Sayyed Abdulla Sayyed Ahmed and no caste was written, but such record was created by joining hands with the employees of Local Body.

4. It is the case of complainant that he is having affidavit of Kazi of Manvat viz. Sayyed Abdul Rahim s/o Sayyed Magdum to the effect that he had not solemnized marriage of any person by name Sayyed Abdula Sayyed Nabi Shah. The affidavit is also to the effect that he has not issued certificate showing the name of the bridegroom as Sayyed Abdulla Sayyed Nabi Shah and he had never made affidavit in support of such certificate.

5. It is the case of complaint that he had applied to the Local Body to make inquiry about the aforesaid over writing and erasing the names in birth registered. There is record produced to show that inquiry was made and directions were given to Local Body to cancel the said entry. Further, there is more record to show that both the applicants had separately applied to the Local Body for making entry of death of their father. One applicant had informed the name of his father as Sardar Abdulla

Sayyed Abdulla and the other applicant had informed name of his father as Sayyed Abdulla Sayyed Nabi Shah. One applicant had given the date of death as 14.6.1989 and the other had given the date of death as 13.6.1989. The record is produced in that regard and in view of such record, the Local Body has issued two separate death certificates.

6. The learned counsel for applicants submitted that the aforesaid record was considered by Caste Scrutiny Committee and validity certificate was given regarding caste in favour of one of the applicant. He also submitted that there is possibility of two different persons died on the aforesaid two dates and so, such record was created. He also submitted that one consent letter is with the applicants to show that father of the complainant had given consent in the year 1967 for making a mutation in respect of agricultural land and in consent letter, he had admitted his relationship with the father of the present applicants. In this regard, the learned counsel for complainant submitted that in Civil Court the applicants failed. The copy of order made by this Court in Second Appeal is produced in that regard. It was submitted that the said record was also forged one.

7. There are circumstances to the effect that the present applicants were managing the aforesaid Dargah and Masjid for some time and grievance was expressed by the complainant in that regard. It appears that one proceeding was also filed before Waqf Tribunal, out of this dispute by the complainant. Though there are such circumstances, the record of the Local Body shows that somebody had done over writing and the aforesaid changes were done. The said changes are cancelled. Further, there is the affidavit of Kazi showing that as per his record, no such marriage was solemnized by him. Thus, there is record to show that false record was created to suit the purpose. Only the applicants could have been benefited by such record.

8. The learned counsel for the applicants further submitted that in the past, similar F.I.R. was given, but report was filed by police under section 169 of Cr.P.C. This Court has carefully gone through that record and it shows that there is no specific mention of aforesaid record. In view of the nature of dispute which was pending, the report was given under section 169 of Cr.P.C. by police. This report was accepted by J.M.F.C. and revision filed against that is also dismissed. It appears that one private complaint was filed by one of the relatives of the

complainant in the past and order is made under section 156 (3) of Cr.P.C. Allegations made in that complaint are little bit different. No report is filed before J.M.F.C. in that case. In any case, in the present matter there are aforesaid specific allegations and there is material.

9. The learned counsel for applicants placed reliance on the judgment delivered by this Court in **Criminal Writ Petition No. 1234/2013 dated 7.8.2014 [between Shivraj s/o. Kundlik Ubale and ors. Vs. The State of Maharashtra and Anr.]**. On the basis of observations made by this Court, the learned counsel for applicants submitted that no two F.I.Rs. are possible. The facts were totally different. No case as such was filed in the present matter and further, no decision like acquittal is given in favour of the applicants. The allegations are materially different and now they are specific. In view of these circumstances, this Court holds that the F.I.R. cannot be quashed.

10. In the result, the application is dismissed.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/