

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

CRIMINAL APPLICATION NO. 2089 OF 2015

Arif Khan s/o. Ahmed Ali Khan & Anr.**Applicants**

Versus

The State of Maharashtra**Respondent.**

Mr. Mohsin Khan Pathan, Advocate for applicants.

Mr. S.A. Ambad, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 29th June, 2015.

ORDER :

1. The petition is filed for relief of discharge in a police case filed against the petitioners for offences punishable under sections 420, 406, 504 and 34 of Indian Penal Code (RCC No. 920/2009 presently pending in the Court of J.M.F.C., Aurangabad). Both the sides are heard.

2. The crime was registered on the basis of report given by one Santosh Mannu Garwad. On 20th October 2008 he had visited the premises of Government Engineering College, Aurangabad, where in the building of Government, there was one institute of software engineering run by the present petitioners. From the complainant amount of Rs. 8500/- was

taken and it was told to him by present petitioners that the institute was Government approved. It was represented to him that the petitioners were running the institute on behalf of the Government and so, the institute was situated in the campus of Government.

3. According to the complainant, around 300 students had taken admission for this course in this institution and from them fees was collected by the petitioners. The annual fees of this course was around Rs. 54,000/- and the remaining amount was to be paid in installments by the complainant and other students. Though the fees was accepted in October 2008, the course was not started. When in January 2009 the complainant went to make inquiry, he found that there was no board of institute and there were some pieces of broken furniture in the hall, in which in the past, the courses were conducted. When the complainant made inquiry with the Principal of Government Engineering College, he was told that the said institute was illegal, it was not approved and action was taken against it and the possession was taken back by the Government.

4. The complainant has made allegations that by making false representation amount was collected from him and

others and they were cheated. In the F.I.R., he has specifically taken the names of both the petitioners and contended that total amount of Rs. 8500/- was taken from him and similar amount was taken by these petitioners from the other students. In the F.I.R., allegations are made that threat of life was given to him in case he approaches police.

5. During investigation, police recorded statements of the officers and staff of the Government Engineering College and also some students.

6. There is statement of the Principal of the Government Engineering College showing that the Government had given the premises to the two petitioners for running course of advance computer training and it was for the period from 31st March 2001 to 31st March 2006. The Principal has contended that after the expiry of aforesaid period, he had asked the petitioners to vacate the premises. He has contended that he had then made correspondence with the Government as in the past approval was given by the Government and ultimately after receiving the order of the Government, the premises was taken in possession on 23.2.2009. He has contended that when the period had expired on 31.3.2006, the petitioners had continued

the business illegally and the petitioners have deceived the students. There are similar statements of Professors of Engineering College.

7. During the course of investigation, police collected receipts of amount collected from other students in the year 2008 and the amounts were collected right from March 2008 to January 2009.

8. It is not disputed that no extension was granted by the Government after the aforesaid period to the institution which was run by the petitioners. When there was no permission, the petitioners ought not to have represented to the students that the course was continued and they ought not to have collected the fees from the students. As there is the record of aforesaid nature, a query was made to the learned counsel appearing for the petitioners and he was asked as to whether the amount collected from the students in 2008 and 2009 was deposited with the Government, the learned counsel could not produce such record. Thus, as per the record fees was collected from the students by the petitioners, but no course was conducted and the amount was not returned and it was not credited to the Government. This material is sufficient to make

out case for framing charge for aforesaid offences. It appears that the charge is already framed. The petitioners came to this Court in the year 2015 when the case was filed against them in the year 2009 and when the case was ready for hearing.

9. The learned counsel for petitioners has produced the copy of the order made by this Court in **Criminal Writ Petition No. 1061/2010 [Tanaji s/o. Honaji Date Vs. The State of Maharashtra] decided on 17th June 2013**. He submitted that in the said case, this Court had given relief to some accused persons and the proceeding to the extent of the petitioner of that case was quashed. The proceeding was filed for offence punishable under sections 379 and 34 of I.P.C. and the facts were altogether different. The facts and circumstances of each and every case are always different. The aforesaid material is more than sufficient to make out the case for framing charge and this Court sees no reason to interfere in the proceeding which is filed against the petitioners.

10. Another submission was made that there is allegation against one petitioner that he was only accountant and so, relief can be give to him. This submission is also not acceptable as in the statement, the Principal of Government

Engineering College has made it clear that both the persons were running this institution.

11. In the result, the application stands dismissed.

[T.V. NALAWADE, J.]

ssc/