

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

CRIMINAL WRIT PETITION NO. 620 OF 2015

Dr. Pralhad s/o. Ram Shivpuje
Age 65 years, Occu. Retired as
Director of Instruction & Dean,
Faculty of Agriculture Marathwada
Agricultural University, Parbhani,
R/o. 'Saru', H.No. 365, Shivram Nagar,
Near Old RTO, Wasmal Road,
Parbhani.

**....Petitioner.
(Ori. Accused)**

Versus

1. The State of Maharashtra
2. Dr. Maruti s/o. Vyankatrao Dhobale,
Age 66 years, Occu. Retired Dean
& Director of Instruction, MAU,
Parbhani, Present Principal,
College of Agri. Business
Management, Latur,
R/o. Gulmohar Apartment
Signal Camp, Soot Mill Road,
Latur, Tq. & Dist. Latur.

**....Respondents.
(Resp. No. 2 Ori.
Complainant).**

Mr. V.C. Solshe, Advocate for petitioner.

Mrs. R.K. Ladda, APP for State/respondent No. 1.

Mr. P.V. Mandlik, Senior Counsel i/b. Mr. P.P. Mandlik, Advocate for
respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 24th June, 2015.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The petition is filed to challenge the judgment and order of Criminal Revision No. 69/2010, which was pending before Special Judge, learned Additional Sessions Judge, Latur and also the order made on Exh. 1 in STCC No. 1150/2009, which was pending before Judicial Magistrate, First Class, Latur. The J.M.F.C., Latur has issued process for offence punishable under section 182 of Indian Penal Code against the petitioner and his revision is dismissed by the Sessions Court.

3) In a private complaint filed by present respondent No. 2, he has contended that only to victimize him and to see that he cannot make career and he does not get appointment to the post of Vice Chancellor, some record was created against him and present petitioner has played active part in creation of false record. It is the case of complainant that he was in the employment of Marathwada Agriculture University, Parbhani for about 33 years and he lastly worked as the Director of Instruction and Dean of this University till 31.3.2006. It is his case that when he was in the run for the post of Vice Chancellor of Konkan Krushi Vidyapith, Dapoli, false complaints were made against him by many and one Dr. K.R. Pawar submitted report against him on 23.3.2006. It is contended that he was not given

any opportunity before submitting any interim report. It is contended that due to this report of Dr. Pawar, he could not get appointment and he retired on the aforesaid post.

4) It is the case of complainant that present petitioner acted malafidely and on 20.6.2009 he issued show cause notice to the complainant in respect of some bank deposits of Gymkhana of Marathwada Agriculture University, Parbhani. It is contended that he replied to the notice, but the Registrar of the University then directed him to deposit Rs. four lakh and similar order was made against other employee Dr. S.V. More. It is contended that this order is issued by the University through Registrar only due to creation of false record by present petitioner. It is contended that false information was intentionally submitted by the present petitioner to University and then the aforesaid action is taken. He had requested for issuing process against the petitioner for the offences punishable under sections 166, 167, 182, 426, 427 and 500 of Indian Penal Code. The Magistrate issued process only for offence punishable under section 182 of I.P.C. by holding that report was unnecessarily submitted to Registrar by the present petitioner.

5) The submissions made and the record show that a direction was given to the present petitioner, who was working as a Director of Instruction and Dean of Marathwada Agricultural University, Parbhani on 1.4.2009 by Registrar of Marathwada Agricultural University, Parbhani to submit no inquiry certificate in duplicate along with original service book as the University was thinking to make order of pension in his favour. In the past, one more inquiry was pending against the complainant and copy of the order made in the said inquiry dated 30.3.2009 is also produced on the record. In that inquiry, it was noticed that the work and conduct of the complainant was not satisfactory with regard to the recruitment made and it was found that proper care was not taken to see that the reservation policy was properly followed. There was also allegation that recruitment of more candidates was made than the posts advertised. However, a decision was taken to give him pensionary benefits. In response to the letter dated 1.4.2009 of the Registrar, the petitioner sent no inquiry certificate and other record with letter dated 8.4.2009. Then on 2.5.2009 Registrar sent one more letter to the present petitioner and directed him to see that the amount which was amount of Gymkhana of University was recovered from the two concerned like the complainant and one Dr. More. It was informed that only after the recovery and taking

decision about the recovery, University would pass order regarding pensionary benefits in respect of the present complainant. After receipt of this letter dated 2.5.2009, present petitioner gave letter to the Registrar and informed that the decision of keeping the amount of Rs. four lakh of Gymkhana in the Co-operative Bank was taken by present complainant and one Dr. More. It was informed that when it was necessary to keep the amount in Nationalized Bank, the amount was kept in Co-operative Bank and the Co-operative Bank was not returning the amount and it was in financial crises. It was informed that in view of this circumstance, the present petitioner was issuing order of recovery of amount. Then he received a letter of Registrar on 9.6.2009 in which Registrar directed him to make detailed inquiry and submit report in respect of the aforesaid incident. After receipt of this letter, present petitioner gave confidential letter to the complainant and asked his explanation as to why the amount of Gymkhana of the University was kept in a private bank, when as per the procedure, the amount was expected to be kept in Nationalized Bank. The Bank had gone in to liquidation at the relevant time. Similar letters were also given to Dr. Shelke, Dr. More, Dr. Patil, Professor Lad and Dr. Bhale on 20.6.2009 by the present petitioner.

6) To the aforesaid confidential letter, complainant gave reply on 1.7.2009 and he contended that the action was malafide and he made allegations against the Director of Instruction and Dean, Faculty of Agriculture, the present petitioner. He informed that though the decision to keep the amount in private bank was taken during his regime, the subsequent committees had not changed the decision and the blame cannot be put only on him. It can be said that similar notices were given to others also, who were members of the subsequent committees. Though offensive language was used by the complainant in reply in another confidential letter dated 2.7.2009, the petitioner again requested him to explain and informed that he was collecting information only as the officer appointed by the University. The petitioner avoided to give detail explanation in letter dated 7.7.2009 and informed that whatever he had mentioned in the previous reply was the only reply from him.

7) After the aforesaid exchange of letters, the private complaint came to be filed on 4.7.2009. The learned J.M.F.C. has held that sending of the letter to Registrar by complainant amounts to offence punishable under section 182 of I.P.C.

8) The provisions of section 182 of I.P.C. reads as under :-

"182. False information, with intent to cause public servant to use his lawful power to the injury of another person.--Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. "

9) In view of the aforesaid circumstances and the record, it is not at all acceptable that there was intention to commit any offence as mentioned in section 182 of I.P.C. The petitioner was only discharging his duties and it cannot be said that there was no reason to take aforesaid steps as Gymkhana did lose the amount.

10) There is allegation against the complainant that due to his act as the President of the Committee of Gymkhana of investing the amount of Gymkhana in a private bank, loss of more than Rs. nine lakh is caused to the University. The amount was kept in fixed deposit, but even after expiry of term of fixed deposit, the bank did not return the amount as it went in to liquidation. The learned counsel for original complainant submitted that this amount cannot be called as amount of University as separate committee was constituted to manage the affairs of Gymkhana and so, under those powers, the complainant and the committee had decided to keep the amount in a private bank. In this regard, the learned counsel for petitioner drew the attention of this Court to the Government Resolution of the State Government dated 6.8.2002. It has reference to the previous Government Resolutions of 1995 and 1996. It shows that Government was expecting from authorities to keep the public money in Nationalized Bank and the period for keeping the amount in fixed deposit is also prescribed. It is not disputed that this money was collected from students and it was collected along with tuition fees under the same receipt. It is not disputed that it was public money. Thus, it was necessary for the petitioner and the committee to take necessary precaution to

see that public money is not lost.

11) The relevant record is already mentioned and it shows that the petitioner/accused was acting as per the directions given to him by the University through Registrar. It was not his personal matter and due to this circumstance also, it cannot be said that the offence punishable under section 182 of I.P.C. is committed by him. This aspect was not considered by the Courts below. The University is bound to propose and take action when public money is lost and that is well within the powers of University. Only because the officer, who is expected to do the needful like giving notices and fix the responsibility, discharges such duties, it cannot be said that he acted malafidely against the petitioner. The action was taken after the retirement of complainant and so, the allegation of malafides has no force. The fact remains that the money is lost and in view of these circumstances, the Courts ought not to have taken cognizance of the matter. This Court holds that the proceeding filed against the petitioner needs to be quashed in view of the facts and circumstances of the present case.

12) In the result, the petition is allowed. The order of issue process made below Exh. 1 in STCC No. 1150/2009

pending in the Court of J.M.F.C. Latur is hereby quashed and set aside. Similarly, the judgment and order of Criminal Revision No. 69/2010 which was pending in the Court of learned Additional Sessions Judge, Latur is quashed and set aside. The complaint filed against the petitioner is dismissed.

Rule is made absolute in these terms.

[T.V. NALAWADE, J.]

ssc/