

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3424 OF 2015

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DATTA S/O DEVRAO GHONGADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for Applicants : Mr N B Patekar h/f Mr. A T Kanawade
APP for Respondents : Mr S P Deshmukh
Advocate for Respondent 3 : Mr R R Chandak

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: November 23, 2015

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PER COURT :-

1. The complaint is filed against the present applicants for the offences punishable under sections 420, 461, 468, 471 read with section 34 of the Indian Penal Code.
2. Present application is filed for quashing the said complaint.
3. We have heard the learned counsel for the applicant and learned counsel for respondent no.3.
4. Mr. Chandak, learned counsel for respondent no.3 strenuously contends that, the appointment of applicant no.2 by applicant no.1 is perse and *exfacie* illegal in as much as the same is against approved roster i.e. roster approved by B.C. CELL. According to the learned counsel, said post, as per roster, is reserved for Scheduled Caste category and applicant no.2 belongs to open category. According to the learned counsel, it is right of the Committee to conduct selection process and appoint eligible

candidates as per roster. Applicant no.1, who is Head Master, has without adhering to the same, made illegal appointment of applicant no.2. Learned counsel submits that, complaint read as it is, shows commission of offence. Government Resolution issued by the State from time to time has also not been considered. The members of the Society also have not been taken into confidence by the applicant no.1 while appointing applicant no.2. One Mr. L.P. Giram is regular teacher, inspite of that, applicant no.1 has shown Smt. A.B. Dhandare as regular teacher and her salary was drawn. All these acts are illegal and amounts to misappropriation of the amount of the Government.

5. We have considered the submissions.

6. Even if we accept the case of the complaint as it is, the offences as are alleged cannot be said to be made out. Even if it is assumed that appointment of applicant no.1 is without following any procedure of law and is against the roster, then the same, at the most, can be said to be illegal appointment that *ipso facto* would not give rise to any offence of cheating and forgery etc. Respondent no.3 or any other affected person may have every right to agitate in respect of the appointment of applicant no.2 by applicant no.1, however, filing of complaint for the offence punishable u/s 420, 461, 468, 471, read with section 34 of IPC certainly would not stand to any reason. It is nowhere shown in the complaint that by appointment of applicant no.2 by applicant

no.1 any unlawful gain has been made by the applicant no.1 nor some documents of valuable security have forged.

7. Considering the above aspects of the matter, complaint cannot be sustained. Application as such is allowed. Complaint bearing First Information Report No.97/2015 registered with Police Station Hingoli, Tq. Hingoli District Hingoli, dated 11.05.2015 against the applicants for the offences punishable under sections 420, 461, 468, 471 read with section 34 of the Indian Penal Code is quashed and set aside.

8. Needless to state that, we have only considered present application to the extent of quashing the criminal case, however, same would not even remotely suggest of having given any finding about legality or illegality of the appointment of applicant no.2 at the behest of applicant no.1.

9. Application is disposed of.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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