

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

CRIMINAL APPLICATION NO. 3512 OF 2015

ASHOK S/O BHANUDAS DHARME AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER

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Advocate for Applicants : Mr. R.A.Deshmukh h/f Mr. S.S Thombre
APP for Respondents: Mr. A.S.Shinde
Advocate for Respondent 2 : Mr. Y.V. Kakde

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: November 16, 2015

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PER COURT :-

1. By the present criminal application, the applicants pray that First Information Report bearing Crime No.I-216/2014 registered with Bidkin Police Station, Tq. Paithan, District Aurangabad be quashed and set aside.

2. The learned counsel for the applicants submits that the applicants are the members of the Gram Panchayat. The complaint has been filed under sections 463, 464, 466, 468, 469, 470, 471, 420 read with Section 34 of the Indian Penal Code on the ground that name of the complainant which was mutated earlier in the record has been cancelled by passing resolution. According to the learned counsel, the applicants, in performance of their official duty as members of Gram Panchayat, passed resolution upon receipt of the application from Shaikh Ayyub and other. Learned counsel submits that

considering the documents submitted, resolution was passed on 6.5.2013 which was also subsequently cancelled. Said resolutions are passed in their official capacity. It is not that record of the gram panchayat has been tampered, however, resolution has been passed in the meeting of the members of the Gram Panchayat and thereafter entries have been mutated accordingly. Learned counsel submits that the resolution have been passed in the official capacity.

3. Mr. Kakade learned counsel for the complainant submits that name of the complainant was recorded in the gram panchayat record. Pursuant to a valid resolution passed and on the basis a registered instrument in favour of the complainant, without notice to the complainant same was cancelled. According to the learned counsel, cancellation of the name of the petitioner from the record amounts to tampering of the record with the Gram Panchayat. Even order of injunction is passed in favour of the complainant in the civil suit initially on 12.11.2013 which is subsequently confirmed on 03.12.2014. According to the learned counsel offence is made out.

4. We have heard learned APP also.

5. It is trite that, the complaint, as it is, is required to be considered while considering an application for quashing the complaint. On perusal of the complaint, it is manifest that the grievance of the complainant is only on the ground that his name has been cancelled from the record of the gram panchayat and that amounts to tampering of the record.

6. Resolutions are passed. Even in the complaint itself, it is stated that resolutions are passed by the Gram Panchayat cancelling the entry in the name of the complainant. When a resolution is passed in accordance with the provisions of law, then in that event if a record is changed pursuant to resolution, it cannot be said that it is a case of tampering of the record. Legality of the resolution being passed can be assailed by the complainant, however, a resolution being passed in one or other manner would not ipso facto give rise to a commission of any offence. If the resolution passed with erroneously or illegally the complainant has remedy elsewhere. Even otherwise, complainant has already filed civil suit and naturally the parties would be governed by the decision in that civil suit.

7. Considering the complaint as it is and the fact that the applicants are the members of the Gram Panchayat have

acted in their official capacity, offence is not made out.

8. It is also a matter of record that the present complainant has filed a complaint against the persons in whose favour resolution was passed on 6.5.2013 under section 420 of the Indian Penal Code with other sections. The said complaint would be on altogether different issue with which we are not concerned in the present case.

9. In the result, Criminal Application is allowed. First Information Report bearing Crime No.I-216/2014 registered with Bidkin Police Station, Tq. Paithan, District Aurangabad for the offences under sections 463, 464, 466, 468, 469, 470, 471, 420 read with Section 34 of the Indian Penal Code is quashed and set aside. Criminal Application is disposed of.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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