

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 734 OF 2014

(Vijay s/o Janardan Khedkar vs. State of Maharashtra thr. PSO Washim City, PS Washim & Anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
JUNE 11, 2015.**

Heard Shri Mirza, learned counsel for the applicant and Shri Doifode, learned APP for the respondents.

Perused the reply affidavit filed by Respondent No. 2 as also by the Divisional Commissioner, Amravati, in view of the orders of this Court dated 23.02.2015.

Shri Mirza, learned counsel, submits that Shri Aher, who is alleged to have received and demanded an amount of Rs. 200/- (Rs. Two hundred only), is not on the role of office of Naib Tahsildar and he is a practicing Advocate. The alleged demand is for completing work which was already done and notices were also issued. As such, the amount demanded and allegedly received, cannot be said to be for said work. He contends that in earlier revenue case also complainant was Non-applicant No. 2 and the orders were passed by predecessor-in-title in the matter on 05.08.2013 about making entries in crop register. He, therefore, states that merely because a practicing Advocate accepts an amount of Rs.200/- and makes some demand (as alleged), cognizance could not have

been taken by the respondents. He has invited attention to a certificate issued by the District Bar Association, Washim, to show that Shri Aher, who is claimed to have demanded and received the amount, is a practicing Advocate since the year 2007 and he is a member of that association since 2008. According to him, in this situation, event dated 06.09.2014 and FIR dated 06.09.2014 cannot be used to prosecute the applicant.

The learned APP has relied upon the reply affidavit. He submits that the defence that Shri Amar Aher is not working in Naib Tahsildar office, cannot be looked into at this stage. He relies upon the assertions in FIR to urge that *prima facie* the ingredients of offence are made out. He also relies upon additional submissions to show that said private person Shri Aher was provided a table and chair in the office of Naib Tahsildar and was occupying it regularly and he has written in all office files and litigations and has actually worked as if he is a public servant. According to him, at this stage, therefore, no case is made out warranting interference. He submits that investigation is already complete and charge sheet has been prepared and sent to Competent Authority for sanction.

The documents produced by the petitioner show that said Shri Aher mentioned as a private person is practicing Advocate with Enrollment No. MAH/6221/2007 and he is a member of District Bar Association, Washim since 18.03.2008. The reply affidavit shows that this person has been provided a Table and chair in

the Tahsildar's office and is regularly occupying it during office hours. This practice has been adopted by all three Naib Tahsildars including present petitioner. The respondents claim that he has written all files of litigations and used to work as a public servant.

In view of these assertions on affidavit and the facts disclosed in the FIR, we find that no case is made out warranting interference. Keeping all rival contentions open for its due consideration at appropriate juncture, we dispose of the present Criminal Application. No costs.

JUDGE

JUDGE

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