

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

CRIMINAL WRIT PETITION NO. 340 OF 2016

Shashikant Bhaurao Hingonekar & Ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr V. D. Hon, Sr. Advocate with Mr A. V. Hon, Advocate for the petitioners
Mr A. R. Borulkar, APP for respondent/State
Ms Surekha Mahajan, Advocate for respondent No. 2
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**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.**

DATED : 09.06.2016.

PER COURT :

1. The petitioners are accused in Crime No. 123 of 2015 registered with Amalner Police Station, Dist. Jalgaon. Besides the petitioners, there are few more accused, who are accused of committing offence punishable under Sections 420, 468, 120 r/w Section 34 of the Indian Penal Code. The bone of contention of the complainant is that, the petitioners are officers of Education Department, Zilla Parishad & Panchayat Samittee in Jalgaon district.

2. In Writ Petition No. 3276 of 1997, this Court vide order dt. 09.07.2010, had directed the State Government to consider the

application of the petitioner seeking permission to start a new secondary school. Accordingly, the Government granted permission to start a new school on 09.07.2010. The officers were processing the permission so that respondent No. 2 – the complainant could establish his new school.

3. Respondent No. 2 herein, thereafter, learnt that one person claiming to be Headmaster of Adarsha Samajik Vikas Sanstha, Takarkheda, Tq. Amalner, made a representation to the petitioners herein and others that the High Court had directed respondents in Writ Petition No. 3276 of 1997 to give his Society a permission to start a new school. Apparently, the statement in this representation was erroneous/false because the High Court in the above mentioned writ petition did not pass any order in favour of Adarsha Society. The officers of the Education Department, Jalgaon were thus misled and they started taking steps for giving permission to Adarsha Society for establishing a new school.

4. In the meantime, respondent No. 2 made a complaint about this and the officers of the Education Department corrected their mistake and completed formality for starting a new school in favour of respondent No. 2 herein. No doubt, in the meantime, two valuable years passed. In a way respondent No. 2 suffered a loss due to delay and also due to dubious activity of Headmaster of Adarsha Society. Being aggrieved by this,

respondent No. 2 - Secretary of Mahatma Phule Shikshan Vikas Mandal, Amalner, filed this complaint against the petitioners and others. The question is; whether any offence is made out against the petitioners. The answer is in negative.

5. There is no element of criminality in the incident that happened between office bearers of Adarsha Society and the petitioners. They eventually cancelled the permission which they had erroneously given to Adarsha Samajik Vikas Sanstha. It was they who were cheated for the time being. Unfortunately, respondent No. 2 lodged a complaint making them accused. This would amount to adding insult to injury. In our view the order passed by the learned Magistrate u/s 156(3) of the Cr.P.C. and consequential registration of FIR against the petitioners, who are the public servants, is a gross abuse of process of law. Continuation of the investigation against the petitioners without any cause and any justification would amount to gross abuse of process of law. In order to meet the ends of justice, it is necessary that, inherent powers u/s 482 of the Cr.P.C. deserve to be exercised to quash the FIR registered to the extent of petitioners.

6. We allow the petition in terms of prayer clause 'B' of the petition. The FIR is quashed to the extent of petitioners. The investigation to proceed against rest of the accused persons other than the petitioners herein.

7. The writ petition stands disposed of accordingly.

[V.L.ACHLIYA, J.]

[A.V. NIRGUDE, J.]