

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

CRIMINAL APPLICATION NO. 2084 OF 2007

1. Mohd. Iliyas Khan s/o Mustafa Khan,
age 29 years, Occ. Service,
R/o Mandi Bazar, Ambajogai,
Tq. Ambajogai, Dist Beed.
2. Mohd. Arif Khan s/o Latif Khan,
age 25 yrs, Occ. Education,
R/o Mandi Bazar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

Applicants/orig accused.

VERSUS

The State of Maharashtra,
Through Police Inspector,
Ambajogai Police Station,
Tq. Ambajogai, Dist. Beed. ..Respondent..

...

Advocate for Applicants : Mr S S Kazi
APP for Respondents: Mr S P Tiwari

...

CORAM : V.K. JADHAV, J.

Dated: December 06, 2016

...

ORAL JUDGMENT :-

1. Learned counsel for the applicants seeks leave to amend the prayer clause of the application. Leave granted.
2. Being aggrieved by the order passed below exh.27 in SCC No.2075/2001, the original accused preferred

this criminal application.

3. Brief facts, giving rise to the present application are as under :-

On 28.9.2001 Police Inspector of P.S. Ambajogai had filed a complaint against the applicants-accused for having committed an offence punishable under section 10 of The Unlawful Activities (Prevention) Act, 1967 (for short hereinafter referred to as the Act of 1967) and on the basis of his complaint, crime no.71/2001 came to be registered at Police Station, Ambajogai. It has alleged in the complaint that on 3.7.2001, the complainant had received information that some members of the Student Islamic Movement of India, which is banned by the Government are doing unlawful activities and on inquiry, the applicants admitted that they are the members of the said organization, however, they could not produce any certificate or document to indicate that they have left the said organization. After due investigation, P.S. Ambajogai has submitted charge sheet before the Judicial Magistrate First Class, Ambajogai on 20.11.2001. On 26.11.2001 the

prosecution has filed an application Exh.20 with a prayer that original charge sheet be returned to the prosecution for obtaining sanction from the Government. The learned Magistrate by order dated 3.12.2001 rejected the said application exh.20. The applicants-original accused on 19.4.2002 filed an application exh.27 under section 17 of the the Act of 1967. It has contended in the application that sanction of the Central Government as contemplated in section 17 of the Act of 1967 was not obtained before filing of the charge sheet before the Court and therefore, cognizance taken by the Magistrate and issuance of the process thereon may be recalled and the applicants-accused be discharged. The learned Magistrate, Ambajogai by impugned order below Exh.27 dated 2.6.2007 rejected the said application. Hence, this criminal application.

4. The learned counsel for the applicants submit that, in terms of the provisions of section 17 of the Act of 1967 the Court is not empowered to take cognizance of any offence punishable under this Act except with the

previous sanction of the Central Government or any other officer authorized by the Central Government in this behalf. Learned counsel submits that, prosecution has not obtained sanction from the Central Government as contemplated under section 17 of the Act of 1967 before filing of the charge sheet and even till today. Learned counsel submits that, the same is also evident from the contents of the application Exh.20 filed by the concerned Investigating Officer before the Magistrate seeking return of the original charge-sheet so as to enable the prosecution to obtain sanction from the Central Government as contemplated under section 17 of the Act of 1967. Learned counsel submits that, the applicants were never the members of the students Islamic Movement of India nor they have committed any crime. The applicant no.1 had completed his B.Sc. B.Ed. The applicant no.2 was a student of B.U.M.S. course at the time of lodging of the complaint. At present the applicant no.1 is working as teacher at Ambajogai and the applicant no.2 is a private medical practitioner at Ambajogai. Their antecedents are clear. Learned counsel submits that, in view of the provisions

of section 17 of the Act of 1967, the continuation of the said case SCC No.2075/2001 without there being any sanction from the Central Government to prosecute the applicants-accused would be the abuse of the court process.

5. Learned counsel in order to substantiate his contentions places reliance on the following two cases :-

1. Ashrafkhan @ Babu Munnerkhan Pathan Vs. State of Gujarat reported in AIR 2013 Supreme Court 217.

2. Criminal Application No.1665/2009 (Khalid Akhtar Abdul Latif Vs. State) decided by this Court on 30.6.2010.

3. Union of India and another Vs. Ashok Kumar Mitra reported in AIR 1995 Supreme Court 1976.

6. As directed by this Court, vide order dated 29.11.2016, the applicant no.2 has filed his affidavit stating therein that the applicant no.1 is in service and working as Assistant Teacher at Mansoor High School, Ambajogai and copy of the service certificate is annexed with the affidavit. It has further contended that, the

applicant no.2 has completed his medical education and since then he is earning his livelihood by doing private medical practice besides and west side of the police station, Ambajogai. He is enrolled as Doctor bearing registration No.I-60865-D. Copy of the same is also filed alongwith affidavit.

7. The learned APP submits that, as per the order dated 28.9.2001 passed by the Principal Secretary of Government of Maharashtra, by referring the notification issued by the Ministry of Home Department dated 27.9.2001, has delegated all the powers which are exercisable under section 7 and 8 of the said Act to the State Government in relation to the said organization and in terms of the said delegations of powers, said powers are now exercisable by the Commissioner of Police and District Magistrate under the State. The District Magistrate by order dated 29.9.2001 under section 8 of the Act of 1967 and authorization thereunder directed to take action against both the applicants. The learned APP submits that, the I.O in the present case submitted an application on 29.8.2001

to the District Magistrate Beed for prior permission for taking action under section u/s 10 of the Act of 1967 for filing charge sheet and on 4.11.2001 submitted charge sheet against the applicants-accused before the Court. The learned APP submits that, there is no substance in the criminal application and the criminal application is thus liable to be dismissed.

8. Section 17 of the Act of 1967 (old) reads as under :-

17. Prosecution for offences under this

Act :-

No Court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf.

9. In the instant case, admittedly, no such sanction is obtained by the prosecution before filing of the charge sheet and even thereafter till today. The same is also evident from the fact that the prosecution itself has submitted an application Exh.20 before the Magistrate

for return of the charge sheet for obtaining prior sanction from the Central Government as provided under section 17 of the Act of 1967. The learned APP by referring affidavit-in-reply by one Abdul Majeed Abdul Kader, Police Inspector, Ambajogai City Police station submitted that in view of the notification of the Ministry of the Home Affairs dated 27.9.2001 and as per the order of the Principal Secretary of the Government of Maharashtra, Home Department dated 28.9.2001, the powers are delegated to the Commissioner of Police and the District Magistrate under the State. On 29.8.2001, the Investigating Officer in the instant case made an application to the District Magistrate for permission to take action under section 10 of the Act of 1967 as against the present applicants-accused. Said notification and order passed by the District Magistrate are placed on record.

10. On careful perusal of the aforesaid notification and the order passed by the District Magistrate, it appears that said notification and order passed with regard thereto are in respect of the delegation of the powers to

prohibit the use of funds of an unlawful association and further to power to notify places used for the purpose of an unlawful association as contemplated under section 7 and 8 of the Act of 1967 (old).

11. In the instant case, charge-sheet came to be submitted against the applicants-accused for the offence punishable under section 10 of the act of 1967 (old) for which previous sanction of the Central Government or any officer authorized by the Central Government in this behalf is necessary as contemplated under section 17 of the Act of 1967 (old).

12. The learned APP as directed by this Court has taken specific instructions in this regard and accepted that no previous sanction as contemplated under section 17 is obtained before filing of the charge sheet and even thereafter.

13. This Court by order dated 29.11.2016 by observing the aforesaid facts further directed the applicants to file an affidavit as to their present status and activities. It

appears from the affidavit of the applicant no.2 that, applicant no.1 is serving as an assistant teacher at a School and applicant no.2 is carrying out his profession as private medical practitioner peacefully in the Ambajogai Town itself. Their antecedents are clear.

14. On perusal of the impugned order, it appears that, the learned Magistrate has rejected the said application mainly on the ground that there is no provision of discharge of the accused in a summons trial and further recalling of the order of issuance of process is prohibited in view of the ratio laid down in Adalat Prasad's Case. It appears from the contents of the application Exh.27 that the applicants have filed said application under the provisions of section 17 of the Act of 1967. The learned Magistrate has not at all considered the provisions of section 17 of the Act of 1967 (old) though it was brought to the notice of the Magistrate that no such sanction is obtained before filing of the charge sheet. The Magistrate has granted liberty to the prosecution to place on record the sanction as contemplated under section 17 of the Act of 1967 before commencement of the trial, during

the trial, before conclusion of the trial. This approach of the Magistrate is not only improper, incorrect, but also illegal. Thus, continuation of the proceedings in the aforesaid case bearing STC No.2075/2001 in absence of any sanction as provided under section 17 of the Act of 1967 (old) would be abuse of court process. Hence, I proceed to pass following order.

O R D E R

- I. Criminal Application is hereby allowed in terms of prayer clause '**B1**' of the application.
- II. Rule is made absolute in the above terms.
- III. Criminal application accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

.....

aaa/-