

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

**CRIMINAL APPLICATION NO. 1596 OF 2005**

1. Somnath Madhavrao Joshi,  
age 76 yrs, Occ. Agril.,  
R/o Kuchar Ota, Paithan,  
Dist. Aurangabad.
2. Kanhaylal Gotiram Mutha,  
age 70 yrs, Occ. Agril,  
and Trader, R/o Paithan,  
Dist. Aurangabad.
3. Devidas Rangnath Kulkarni,  
age 55 yrs, Occ. Agri,  
R/o as above.
4. Satish Biharilal Baldava,  
age 45 yrs, Occ. Agril,  
and Trader, R/o as above.
5. Balkisan Ramkaran Baheti,  
age 55 yrs, Occ. Trader,  
R/o as above.
6. Ramchandra Pandurang Kulkarni,  
age 65 yrs, Occ. Nil,  
R/o Paithan, Dist. Aurangabad.                      Petitioners.  
(orig accused 1 to 3, 5 to 7)

**VERSUS**

1. Ambadas Digambar Deshpande,  
age 57 yrs, Occ. Agril,  
R/o Kuchar Ota, Paithan,  
Dist. Aurangabad.
2. State of Maharashtra.                      Respondents

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Advocate for Applicants : Mr. V J Dixit Sr. Counsel i/b  
Mr. A B Kadethankar

Advocate for Respondent no.1 : Mr Pradeep Deshmukh  
h/f Y.P.Deshmukh

APP for Respondent no.2 : Mr S P Tiwari

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**CORAM : V. K. JADHAV, J.**

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Date of Reserving the Judgment : 20.12.2016  
Date of pronouncing the Judgment :23.12.2016

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**JUDGMENT :-**

1. By this criminal application, the applicants-original accused nos. 1 to 3 and 5 to 7 have challenged the order dated 12.11.2003 passed by the learned Judicial Magistrate First Class, Paithan District Aurangabad below Exh.1 in RCC No.158/2003 thereby issuing process against the applicants for the offences punishable under sections 465, 468, 471, 474 r/w 34 of I.P.C. and further also seek to quash prosecution of the applicants-accused in the form of R.C.C. No.158/2003 pending in the Court of J.M.F.C., Paithan, District Aurangabad.

2. Brief facts, giving rise to the present application are as follows :-

a] Respondent No.1-original complainant has filed complaint bearing R.C.C. No.158/2003 against the

present applicants and one more accused, who, is presently no more for having committed an offence punishable under sections 465, 468, 471, 474 r/w 34 I.P.C. Respondent no.1-original complainant was working as Headmaster in Shri Balaji Vidyalaya, Nathnagar, Paithan, District Aurangabad, which is a school run by Dnyan Prabodhini Shikshan Sanstha, Paithan, District Aurangabad. It has contended that, the applicants are the office bearer of the Trust, even they are not accepted by the Assistant Charity Commissioner as office bearer and trustees of the Institution.

b] It has alleged in the complaint that, the then Secretary one Shri G.V.Bharde issued him a charge sheet on 15.1.1998. In pursuance of Rule 32 of Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1977, if, any inquiry is to be held against the head of an institution, it must be conducted by the president of the Management and such a proceeding cannot be initiated by issuing a charge sheet or statement of allegations signed by the Secretary. Consequently, respondent-complainant had

challenged the same before the School Tribunal as well as before Civil Judge J.D, Paithan. It has further alleged that, all the applicants-accused were aware about the charge sheet, however, in collusion, it was decided to issue a supplementary charge sheet and resolution was also taken to that effect. Accordingly, a supplementary charge sheet dated 15.2.1999 was issued under the signature of President (Karyavahak). Respondent-original complainant had raised a dispute in appeal No.200/1999 before School Tribunal, Aurangabad and the said matter was posted on 20.7.2000 for final arguments. The applicants-original accused were realized that, such charge sheet might not stand in the Court of law, the applicants prepared a forged document under the signature of applicant no.1 and behind back of the respondent-complainant produced the same before the School Tribunal, Aurangabad. It has thus alleged in the complaint that the applicants-accused persons in furtherance of their common intention have committed the offence punishable under section 465, 468, 471, 474 read with section 34 of I.P.C. Respondent-complainant has,

therefore, approached to the Police Station, Paithan, but, he was given understanding to approach the Court. Accordingly, respondent-complainant has filed the private complaint before the Judicial Magistrate First Class, Paithan, which is numbered as R.C.C. No.158/2003.

c] The learned Magistrate, Paithan, initially by order dated 28.7.2003 directed the concerned Police Station to carry out the investigation and submit the report as provided under section 156(3) of Cr.P.C. After due investigation, the concerned police station has submitted report to the effect that no offence is made out as per the complaint filed by the respondent-complainant.

d] By impugned order dated 12.11.2003 on perusal of the complaint and report filed by the police and further relying on the statements of two witnesses recorded during the course of said investigation, the learned Magistrate has issued process against the applicants-accused for the offence punishable under sections 465, 468, 471, 474 read with 34 of I.P.C. The learned Magistrate in the impugned order has observed that, the

complainant has prima facie proved that the accused had prepared another document in order to fill up lacuna and considering the statement of two witnesses against them, prima facie case is made out against accused persons for issuance of process.

e] The applicants-original accused filed an application Exh.23 for recalling the process on various grounds. However, the learned Magistrate has rejected the said application in view of the judgment of the apex Court in the case of Adalat Prasad Vs. Ruplal Jindal and others reported in 2004 Vol. VI Supreme 371. Hence, this Criminal Application.

3. The learned counsel for the applicants-original accused submits that, first charge sheet dated 15.1.1998 was issued by late Govind Bharde and after taking a fresh resolution, charge sheet was issued under the signature of applicant-accused no.1. This fact was well within the knowledge of the respondent-complainant. Thus, respondent-complainant has not filed the complaint forthwith in the police station till 26.10.2002. Further, the respondent-complainant had filed the

complaint before the Court on 23.7.2003. There is inordinate delay in filing the complaint for which no explanation is tendered. Learned counsel for the applicants submits that, the learned Magistrate has issued the process on the basis of the statement of witnesses Chandrakant and Vasant recorded during the course of the investigation. Learned counsel submits that, the concerned Investigating Officer has submitted the report in the negative and thus, the Magistrate cannot take into account statement of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order issue of process against the applicants-accused. The learned Magistrate may take cognizance of the offence under section 190 (1) (a) on the basis of the original complaint and proceed to examine on oath the complainant and his witnesses under Section 200 of Cr.P.C. If he adopts the third alternative, he may hold or direct an inquiry under section 202 if he thinks fit. Thereafter, he may dismiss the complaint or issue process, as the case may be. The learned counsel for the applicants-accused submits that, it has alleged in the complaint that the

applicants-accused persons have filed the alleged forged charge sheet before the School Tribunal. Therefore, as per the provisions of section 195 read with section 340 of Cr.P.C. only School Tribunal is competent to take cognizance of the offence and he is empowered to lodge the complaint on making inquiry as contemplated under section 340 of Cr.P.C. On the basis of such a complaint, in terms of provisions of section 195 of Cr.P.C. cognizance can only be taken and respondent-complainant has thus no locus standi to file the complaint.

The learned counsel for the applicants-original accused submits that, the respondent-complainant had filed writ petition No.1677/2001 before the learned Single Judge of this Court wherein dismissal of his appeal before the School Tribunal against termination was challenged. The learned Single Judge of this Court has dismissed said writ petition, and therefore, respondent-complainant has filed a L.P.A. No.4/2004 in Review Petition No.7370/2003 in Writ Petition No.1677/2001. Even though, the Division Bench of this Court has observed about production of document of

subsequent charge-sheet behind back of the respondent-complainant, ignored the same without making any observations about forged charge sheet as alleged by the respondent-complainant in the present complaint.

Learned counsel submits that, first charge sheet dated 15.1.1998 was issued by the then Secretary Mr. Govind Bharde and, thereafter fresh resolution was taken and charge sheet was issued under the signature of President. Thus, the entire complaint is not disclosing any offence nor the ingredients of the offence for which process has been issued against the applicants-accused persons. Thus, continuation of proceedings in R.C.C. No.158/2003 would be the abuse of the process of the Court.

4. The learned counsel for the applicants, in order to substantiate his contentions placed his reliance on following cases :

1. H.S.Bains Vs. The State (Union of Territory of Chandigarh) reported in AIR 1980 Supreme Court Page 1883.
2. Suresh Chand Jain Vs. State of Madhya Pradesh Reported in 2001 (2) SCC page 628.

3. Manish Vijay Mhashelkar Vs. State of Maharashtra and another reported in 2008 (1) Bom.C.R. Cri 378.
4. Bhagirathabai Rambhaukar Akotkar Vs. State of Maharashtra and another, reported in 2007(2) Bom.C.R. Cri 285.

5. Learned counsel for respondent no.1-original complainant submits that, prima facie, it is proved by respondent-complainant that both the accused had forged and prepared another document in order to fill up the lacuna. On 15.2.1999 charge sheet/statement of allegations under the signature of the then Secretary was served on the respondent-complainant, however, after realizing the mistake that pursuance to the provisions of Rule 32 of the M.E.P.S., Act, 1977, if inquiry is to be held against the head of the Institution, it must be conducted by the President of the Management, another charge sheet was forged and prepared under the signature of President and the same was produced before the School Tribunal after hearing is completed in appeal. Respondent-complainant has raised main ground in the said appeal that, charge sheet was issued by the Secretary and not by the President. Consequently, false and fabricated document

in the shape of second charge sheet under the signature of President was prepared and produced. Learned counsel submits that, respondent-complainant have given all the details constituting the offence of forgery. It is not the case of the respondent-complainant that forgery in respect of the said document charge-sheet was committed after the document was produced before the Presiding Officer of the School Tribunal and therefore, provisions of section 195 would not apply. So also provisions of section 340 of Cr.P.C. are also not attracted.

The learned counsel for respondent-complainant submits that, the Magistrate is not bound by the opinion of the Investigating Officer. Even if, the investigating officer submits the report in the negative, the Magistrate can take into account statements of the witnesses examined by the police during the course of investigation and take cognizance of the offence complained of and order issue of process to the accused. Learned counsel submits that, the learned Magistrate has rightly issued the process against the applicants-accused. Complaint discloses the ingredients of offence

for which process has been issued against the applicants-accused. No interference is required. There is no substance in this criminal application and the criminal application is thus liable to be dismissed.

6. Learned counsel for respondent-original complainant places his reliance on the following cases :-

1. Fakhruddin Ahmad Vs. State of Uttaranchal and another reported in 2008 AIR SCW 5881.
2. M/s. India Carat Pvt. Ltd., Vs. State of Karnataka and another reported in 1989 SC page 885.
3. Jitendra Chandrakant Mehta Vs. M/s Shamrock Impex Pvt. Ltd., and others reported in reported in 2006 (4) Mh.L.J. 355.

7. I have also heard the learned APP for the Respondent State.

8. It appears from the allegations made in the complaint that, initial charge-sheet issued and served on the complainant signed by the then Secretary. In terms of provisions of Rule 32 of the M.E.P.S. Act, 1977, if, any, inquiry is to be held against the head of an institution, it must be conducted by the President of the

Management. However, another charge sheet of the same date was prepared under the signature of the President and it was produced before the School Tribunal after hearing is completed in the appeal. It was main ground in the said appeal before the School Tribunal that charge sheet was issued by the Secretary and not by the President. Consequently, a false and fabricated document in the shape of second charge sheet under the signature of the President was prepared.

9. It is a matter of record that, after arguments were over before the School Tribunal, a copy of the charge sheet signed by the President was produced before the Tribunal without giving an opportunity to the complainant-respondent to lead any evidence or to advance arguments on that document. The Division Bench of this Court in LPA No.4/2004 observed that copy of the charge sheet purported to have been signed by the President was produced before the School Tribunal and the Presiding Officer of the School Tribunal did not call upon to the appellant to give his

say on the application for production of the document and without giving an opportunity to the appellant, allowed the application seeking production of the said document. Thus, the application for production was allowed and further the Presiding Officer has relied on the said document in his judgment. The Division Bench has observed that, since the opportunity of hearing at the stage of production of the said document was not given to the respondent-complainant herein, it would be necessary to ignore the production of the said document. The Division Bench of this court in the aforesaid L.P.A. has further observed that, the respondent-complainant herein had failed to discharge its burden that subsequent charge sheet was not signed by the President, but by the Secretary. Thus, the Division Bench has declined to interfere into the order passed by the learned Single Judge and accordingly, dismissed the L.P.A. However, there is prima facie case as alleged in the complaint that the applicants-accused prepared and submitted another document in order to fill up the lacuna. Same is also evident from the statement of two witnesses recorded during the course

of the investigation by the concerned I.O.

10. Learned counsel for the applicants-accused has vehemently submitted that, it is for the Presiding Officer of the School Tribunal to take action against the applicants-accused and in view of the provisions of Section 195 read with section 340 of Cr.P.C. there is a clear bar to entertain such a complaint if filed directly before the Court. In a case of Jitendra Mehta (supra) relied upon by the learned counsel for the respondent-original complainant in paragraph no.16 of the judgment, the Supreme Court by referring the judgment reported in 2005 (3) Mh.L.J. (SC) 530 [Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another] in paragraph no.16 of the judgment has made following observations :-

16. In view of this judgment, the objection of Mr. Chitnis, is required to be rejected. It is not the case of the complainant that forgery in respect of the said letter was committed after the document was produced before the Small Causes Court and therefore the bar under [Section 195](#) would not apply and complainant was justified in moving the Magistrate and the Magistrate was justified in passing further order.

11. In the aforesaid case, the complainant had alleged commission of forgery of certain documents produced before the small causes court. Accused therein had taken a plea that if at all document before the small cause court was forged one or forgery was committed in respect of any document before the small cause court, then no complaint can be filed excepting upon the complaint in writing by that Court in view of the provisions of section 195 of Cr.P.C. Supreme Court has observed that, it was not the case of the complainant that forgery in respect of the said document was committed after it was produced before the small causes court and therefore, bar under section 195 would not apply.

In a case Iqbal Singh Marwah (supra) in paragraph no. 6 of the judgment the Supreme Court had an occasion to discuss the question regarding interpretation of clause (b) (ii) of Sub section (1) of Section 195 as above.

*“One possible interpretation is that when an offence described in [Section 461](#) or punishable under [Section 471](#), [Section 471](#) or [Section 476](#) IPC is alleged to have been committed in respect of a document which is subsequently produced or*

*given in evidence in a proceeding in any court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable.”*

12. The Supreme Court held that Sachida Nand Singh Vs. State of Bihar reported in 1998 (2) SCC Page 493, was correctly decided and the view taken therein was a correct view. Section 195 (1)(b)(ii) would be attracted in respect of the document after it is produced or given in evidence in proceeding in any court. The Supreme Court in the facts of the said case, further observed that, so far as that question is concerned it was nobody's case that offence enumerated under section 195 (b)(ii) was committed in respect of the said Will after it was produced in the Court. Thus, the Supreme Court held that, bar under section 195 (1) (b) (ii) Cr.P.C would not come into play and there was no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondent.

13. In the instant case, it is not the case of the present respondent-complainant that forgery in respect of the said charge sheet was committed after document was produced before the school Tribunal. Thus, bar under Section 195 of Cr.P.C. would not apply and respondent-complainant has justified in moving the Magistrate and the Magistrate is also justified in passing further orders.

14. Learned counsel for the applicants-original accused has vehemently submitted that, though, investigating officer has submitted the report in the negative, the learned Magistrate has erroneously relied upon the statements of two witnesses recorded during the course of the aforesaid investigation and issued the process against the applicants-accused. It is well settled that, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the view expressed by the police in their report and decide whether offence is made out.

15. In a case Fakhruddin Ahmad Vs. State of

Uttaranchal and another (reported in 2008 AIR SCW 5881) supra relied upon by the learned counsel for respondent in paragraph nos. 9 and 10 of the judgment, the Supreme Court has made following observations :-

9. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under [Section 200](#) or [Section 202](#) of the Code, he may order an investigation to be made by the police under [Section 156 \(3\) of the Code](#), which the learned Magistrate did in the instant case. When such an order is made, the police is obliged to investigate the case and submit a report under [Section 173 \(2\) of the Code](#). On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under [Section 190 \(1\) \(b\) of the Code](#) and issue process straightway to the accused. However, [Section 190 \(1\) \(b\) of the Code](#) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.

10. Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under [Section 173 \(2\) of the Code](#), which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

16. In a case of M/s India Carat Pvt. Ltd., Vs. State of

Karnataka reported in AIR 1989 Supreme Court page 885 (supra) relied upon by the learned counsel for respondent in paragraph no.16 of the Judgment, the supreme court has made following observations :-

16. The position is, therefore, now well settled that upon receipt of a police report under [Section 173\(2\)](#) a Magistrate is entitled to take cognizance of an offence under [Section 190\(1\)\(b\)](#) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. [Section 190\(1\)\(b\)](#) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer; and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under [Section 190\(1\)\(b\)](#) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in [Sections 200](#) and [202](#) of the Code for taking cognizance of a case under [Section 190\(1\)\(b\)](#) though it is open to him to act under [Section 200](#) or [Section 202](#) also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

17. It is thus well settled that, upon receipt of a police report under section 173 (2) a Magistrate is entitled to take cognizance of an offence under section 190 (1)(b) of the Code even if police report is to the effect that no case is made out against accused. The Magistrate can take into account the statement of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order to issue process against the accused. The Magistrate need not follow the procedure laid down in section 200, 202 of Cr.P.C. The Magistrate can ignore conclusions arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case.

18. In the instant case, the Magistrate has rightly done so. He has not accepted the conclusions drawn by the investigating officer and considered the statement of the witnesses examined by the investigating officer during the investigation and taken cognizance of the offence complained of and further issued process against the applicants-accused.

19. In a case of H.S.Bains (supra) relied upon by learned counsel for applicants-accused, the Supreme Court has observed that a Magistrate on receipt of a complaint, order an investigation under section 156 (3) of Cr.P.C. and receives a police report under section 173 (1), may, thereafter, do one of three things : 1)- he may decide that there is no sufficient ground for proceedings further and drop action; (2) he may take cognizance of the offence under section 190 (1) (b) on the basis of the police report and issue process, this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under section 190 (1) (a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

20. In the instant case, it appears that the Magistrate had taken recourse to second category as aforesaid and

taken cognizance of the complaint on the basis of the statement of the witnesses recorded during the course of the investigation by ignoring the conclusions arrived at by the police in their report.

21. It appears from the allegations made in the complaint that, there is a prima facie case for proceeding and issuing process against the applicants-accused. Prima facie, there is a material to support the allegations made in the complaint. Learned Magistrate has relied upon the statement of one Shri Chandrakant Joshi and another witness Vasant recorded during the course of the investigation by the police. Both the witnesses in their statements have stated that applicants-accused prepared a forged and false resolution and false documents by way of charge sheet against respondent-complainant. The learned Magistrate in his impugned order has observed that, on going through the documents placed on record, it is crystal clear that, on the charge sheet dated 15.2.1999 Secretary had signed and again another charge sheet was prepared which was signed by the President.

22. In view of the above discussion and the views expressed by the Supreme Court in the case cited and referred above, I do not find any fault in the order passed by the learned Magistrate. Consequently, I do not find any substance in the submissions that the continuation of the prosecution in form of RCC No.158 of 2003 would be abuse of the court process. Hence I proceed to pass the following order.

**O R D E R**

- I. Criminal Application is hereby dismissed.
- II. Rule discharged.
- II. Criminal Application accordingly disposed of.
- IV. At this stage, the learned counsel for the applicants-accused requested for continuation of interim relief for certain period. Request stands refused.

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**( V.K. JADHAV, J. )**

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