

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

CRIMINAL APPLICATION NO. 1974 OF 2004

Sou.Lata w/o Sudhakar Suvarna

Age : 39 Yrs., Occ. : Service,

R/o : Plot No. 3, Laxmi Colony,

Cantonment Road,

Aurangabad.

.... APPLICANT

VERSUS

01. The State of Maharashtra

Through the Public Prosecutor
of High Court, Aurangabad.

02. Smt. S.B.Mahale

Vith Judicial Magistrate

First Class, Aurangabad

the then IXth Judicial

Magistrate First Class,

Aurangabad.

[deleted as per order

dated 10/01/2006] **NON APPLICANTS**

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Mr. Joydeep Chatterji h/f Mr. N.L.Choudhari,
Advocate for Applicant.

Mr. K.S.Hoke Patil, A.P.P. for Non-applicant
No. 1 – State.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 14th DECEMBER, 2016

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ORAL JUDGMENT :

01. Heard Mr. Joydeep Chatterji holding for Mr. N.L.Choudhari, learned Advocate for the Applicant and Mr. K.S.Hoke Patil, learned A.P.P. for the non-applicant No. 1 - State.

02. The applicant has approached this Court with the prayer that the proceedings of Criminal Case initiated against her for the offences punishable u/s 384 of the Indian Penal Code and u/ss 3,7 and 8 of the Maharashtra Educational Institutions [Prohibition of Capitation Fee] Act, 1987 be quashed.

03. The prosecution came to be initiated against the applicant, who is working as Cashier in the school, the Principal of the school and the Head Mistress of the school on the complaint of the father of a child, alleging that the accused/Principal had demanded donation of ₹ 5,000/- [Rupees Five Thousand] for granting admission to his 5 year old son. According to the complainant, the accused/Principal had put an endorsement on a chit that admission be given on payment of ₹ 5,000/- and the complainant was referred to Miss. Vivina, who was working as the Head Mistress of the school and the complainant had given ₹ 5,000/- to Miss. Vivina, who in turn gave the amount to the applicant.

04. The learned Advocate for the applicant submitted that the school in question is a minority unaided institution and the State Government has not fixed the rates of fee to be charged from the students of the school and, therefore, the complaint alleging demand of capitation fee is not maintainable. In support of the submission, the learned Advocate has

relied on the Judgment given in the case of **Father Thomas Shingare & Ors. Vs. State of Maharashtra & Ors. Reported in AIR 2002 Supreme Court 463.**

It is stated that Father Thomas Shingare, the Principal, who was co-accused is no more. It is submitted that charge-sheet is not filed against Miss. Vivina, against whom allegations are made in the complaint.

The learned Advocate for the applicant has prayed that the order passed by the Magistrate on 05/01/2004 rejecting the application [Exh.20] be set aside and the proceedings be quashed.

05. The learned A.P.P. has opposed the prayer made on behalf of the applicant and has submitted that considering the material on the record, the prosecution can not be quashed in exercise of the jurisdiction u/s 482 of the Code of Criminal Procedure and the applicant should face the trial.

06. With the assistance of the learned Advocate for the applicant and the learned A.P.P., I have examined the documents placed on the record of the application. As recorded above, the allegations of the complainant are that Father Thomas Shingare, who was the Principal of the school had demanded ₹ 5,000/- for granting admission to the 5 year old son of the complainant. The accusations against the applicant are that the applicant had collected the amount of ₹ 5,000/- from Miss. Vivina, to whom the complainant had given the amount. Considering the nature of the accusations, in my view, even if they are taken to be true at their face value, they do not make out any offence u/s 384 of the Indian Penal Code or u/s 3 of the Maharashtra Educational Institutions [Prohibition of Capitation Fee] Act, 1987.

Moreover, the submission made on behalf of the applicant that the school in which admission was sought by the complainant for his 5 year old son is an un-aided minority school and the State Government has not prescribed the fees to be charged from the students of the school, has not been

controverted by the learned A.P.P. Considering the proposition laid down in the Judgment given in the case of Father Thomas Shingare & Ors. [supra] [co-accused in the present matter], the submissions made on the behalf of the applicant that the prosecution of the applicant for the offence punishable u/s 3 of the Maharashtra Educational Institutions [Prohibition of Capitation Fee] Act, 1987 is unsustainable, are required to be accepted.

Hence, the following order :

- (i) The Order passed by the learned Magistrate on 05/01/2004 rejecting the application [Exh.20] filed by the applicant, praying for discharge, is set aside.
- (ii) The proceedings of R.C.C. No. 1052/2002 pending before the Magistrate at Aurangabad are quashed.
- (iii) Rule made absolute in the above terms.

- (iv) In the circumstances, the parties to bear their own costs.

[Z.A.HAQ, J.]

KNP/Cr.Apln. 1974.2004 - [J]