

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

CRIMINAL APPLICATION NO. 4549 OF 2007

1. Sayed Shamshoddin S/o Syed Kasim Ali,
Age. 52 years, Occ. Legal Practitioner,
R/o. Labour colony, Nanded.
2. Pathan Ismail Khan S/o Maheboob Khan,
Age. 32 years, Occ. Service,
R/o. Ardhapur, Tq. Ardhapur,
Dist. Nanded. ..APPLICANTS..

VERSUS

State of Maharashtra,
Through Police Station Ardhapur,
Tq. Ardhapur, Dist. Nanded. ..RESPONDENT..

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Advocate for Applicants: Mr S V Kurundkar
APP for Respondent-State : Mr S P Tiwari

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CORAM : V.K. JADHAV, J.
Dated: December 19, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order passed below Exh.11 dated 13.11.2002 by Judicial Magistrate First Class, Nanded in RCC No. 425/2002 and the Judgment and order dated 1/09/2007 passed by Sessions Judge, Nanded in criminal revision no. 259/2002 confirming thereby the order passed by Magistrate, the original-

accused nos. 1 and 2 approached this court by filing present criminal application.

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

On 27.9.2001 one Kashinath Pathak, Education Officer, Ardhapur zone has lodged a complaint at Ardhapur Police Station, Ardhapur alleging therein that accused nos. 1 to 3 are running a private school namely "Sabiha Urdu Primary School" without recognition by the Government since 1991. On the basis of said complaint, Police Station Ardhapur registered the crime bearing no.129/2001 for the offence punishable under sections 420, 468, 471 read with 34 of Indian Penal Code. On completion of investigation, the investigation officer submitted charge sheet before the J.M.F.C., Nanded which is registered as R.C.C. 425/2002. The applicants-original accused nos. 1 and 2 filed an application Exh.11 seeking discharge. The learned Magistrate by impugned order dated 13.11.2002 rejected the said application and learned sessions judge by impugned judgment and order dated 1.9.2007 dismissed

the criminal revision no. 259/2002 and confirmed the order passed by the Magistrate as aforesaid. Hence this criminal application.

3. The learned counsel for the Applicants submits that, in terms of provisions of Rule 106 and 107 of The Bombay Primary Education Rules, 1949 (hereinafter referred to as 'Rules of 1949' for short) an application for recognition of the school shall be made after school is actually started functioning and has been in existence for a period of not less than three months and as per rule 107(1) after receipt of said application, the competent authority shall arrange for the inspection of the school referred in the application and shall forward the inspection report to the School Board, or as the case may be, to the Education Committee, together with its recommendation relating to the recognition of, and grant-in-aid, if any payable to such private school. The learned counsel submits that, preexistence of primary school is necessary before according recognition by the competent authority.

a] The learned counsel further submits that, the applicants started said Urdu School in the year 1991 and continuously submitted proposal to the Government for according recognition after depositing requisite fees. Thus, the applicant-Society constrained to approach the National Commission for Minority Educational Institutions by filing an application which is numbered as case No.1445/2006. The National Commission for Minority Educational Institution has observed that the present applicant society had applied to the State Government for recognition of the 'Sabiha Urdu Primary School', Ardhapur, District Nanded, but the State Government did not accord recognition as sought. Further it is also observed that, there is nothing on record to show or suggest that the petitioner school is not having the requisite infrastructure for grant of recognition by the State Government. The Commission has thereafter observed that, by denying recognition as sought by the petitioner, the State Government has violated educational rights of the minorities enshrined in Article 30 (1) of the Constitution and accordingly, directed to reconsider the request of

the petitioner for grant of recognition.

b] Learned counsel submits that, in terms of the provisions of Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (hereafter referred to as the 'Act of 2004'), the proposal to establish a Minority Educational Institution is required to be decided by the competent authority within a period of 90 days and in terms of Sub-section (3) Clause 'a' and 'b' of Section 10, there is a deeming provision about accepting of such proposal, if no decision is taken in the prescribed period of 90 days.

c] Learned counsel submits that, in terms of the provisions of Rules 108 of the Rules of 1949 certain benefits of recognition are extended to the private schools and recognition as an approved school entitle the Management of the school to be eligible for grant-in-aid and further to present its pupils as candidates for scholarships and to admit scholarship holders and to claim such other benefits as Government may, from time to time declare in this behalf. Learned counsel submits

that, except these provisions there is nothing in the Bombay Primary Education Act, 1947 or in the Rules of 1949 prescribing the consequences of not obtaining recognition.

d] Learned counsel further submits that, in the year 2008, the petitioner Education Society had instituted a R.C.S No.295/2008 against Zilla Parishad, Nanded and the Education Officer, Zilla Parishad, Nanded and the Block Education Officer, Panchayat, Ardhapur for a decree of perpetual injunction restraining the defendants therein from interfering into the affairs of the School or to close school or to face the prosecution. The Civil Judge J.D. Ardhapur, by its judgment and decree dated 20.1.2011 decreed the said suit and restrained the defendants as named above permanently from interfering into the management of the petitioner-school.

e] Learned counsel submits that, in a proceeding taken under 482 of Cr.P.C., this Court is free to consider material that may be produced on behalf of the accused

to arrive at a decision where the charge as framed could be maintained. Further, even the courts below can look into the material produced by the defence when said material convincingly demonstrates that whole prosecution case is totally absurd or totally concocted. In some very rare cases, the court is justified in looking into the material produced by the defence at the time of framing of the charges. Learned counsel submits that in the above backdrop of the case, this is a rare case where the courts below should have looked into the material produced by the defence as those documents if considered, the entire prosecution case appears to be absurd.

4. The learned counsel in order to substantiate his submissions places reliance on following cases :-

1. Rukmini Narvekar Vs. Vijaya Satardekar and ors. Reported in AIR 2009 Supreme Court 1013.
2. Harshendra Kumar D. Vs. Rebatilata Koley and others reported in (2011) 3 Supreme Court Cases 351.

5. The learned APP submits that, the applicants are running school without any recognition from the Government. The applicants have given admission to the students of 1st to 4th standard and also taken examination of those students without any recognition of the school from the Government. There is sufficient material collected by the I.O. during the course of the investigation. There is no case for the applicants to seek discharge. The learned APP submits that as per provisions of section 239 of Cr.P.C., the only charge sheet and documents submitted alongwith charge sheet can be considered while deciding the application seeking discharge. The applicants have produced documents before this Court for the first time and in terms of the provisions of Section 239 of Cr.P.C. those documents cannot be considered. The learned APP submits that the applicants are running said school since the year 1991 and even assuming that preexistence of the school is required, till the filing of the complaint and even thereafter no recognition was granted to the school run by the applicants. The learned APP submits that, both the courts below have, therefore, rightly considered this

legal position and rejected the application Exh.11 seeking discharge.

6. Rule 106 of the Rules of 1949, reads as under :-

“106. Application for recognition : (1) Subject to the provisions of this rule an application for recognition of a new private school shall be made to the Competent Authority not later than the first day of November, of any year.

(2) Such application shall be made after the school has actually started functioning and has been in existence for a period of not less than three months.

(3) The application shall be accompanied by a statement in the Form 'A' set out in Appendix 'C' to these rules together with an undertaking in writing that the conditions of employment of teachers in such private school shall be as near as possible to those specified in Schedule 'F' appended to these rules.

(4) The application shall state the name and address of the correspondent, and the Management shall report any change in such name and address of the correspondent to the Competent Authority as soon as possible.”

7. In terms of sub section (2) of Section 106 of Rules of 1949, such application shall be made after the school actually started functioning and has been in existence for a period of not less than three months. It is thus clear that preexistence of such school is necessary seeking recognition as contemplated under Rule 106 of Rules of 1949. Further, as per provisions of Rule 107 of the Rules of 1949, the competent authority shall

arrange for the inspection of the school referred to in the application, and shall forward the inspection report to the School Board, or as the case may be, the Education Committee, together with its recommendations relating to the recognition of, and the grant-in-aid, if any, payable to such private school. Benefits of such recognition are prescribed under Rule 108 of Rules of 1949. Rule 108 of Rules of 1949 reads as under :-

“108. Benefits of Recognition : (1) Subject to the provisions of rules 110 and 111 a private school recognized as an approved school shall, unless it denies admission to pupils on grounds only of religion race, caste, language or any of them or declines to employ any person on the ground only of religion race, caste, language or any of them be eligible for grant-in-aid on application made in that behalf under rule 110 in accordance with the rules hereinafter contained.

(2) Recognition as an approved school shall also entitle the Management of the school-

(a) to present its pupils at any public examination conducted by the Department;

(b) to present its pupils as candidates for scholarships and to admit scholarship holders; and

(c) to claim such other benefits as Government may, from time to time declare in this behalf.”

8. It is thus clear that, the School Board or the Education Committee after considering the inspection report and recommendations of the competent authority

thereon, on satisfaction about the need of the school in the locality, standard of the work in, and general management of the private school, recognize the private school as approved school and in terms of Rule 108 such a school gets benefits of the recognition.

9. In the provisions of Act of 1947 and Rules of 1949 referred above, the consequences of rejection of an application for recognition are prescribed. In terms of Section 10 of the Act of 2004 the competent authority is required to consider the proposal to establish a Minority Educational Institution within a stipulated period and, in case, the proposal is not considered in that stipulated period, it shall be deemed that the competent authority granted no objection certificate to such institution.

10. Section 10 of the Act of 2004 reads as under :-

[10 **Right to establish a Minority Educational Institution. —**

[\(1\)](#) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.]

[\(2\)](#) The Competent authority shall,—

[\(a\)](#) on perusal of documents, affidavits or other evidence, if any; and

- (b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

- (3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—

- (a) the Competent authority does not grant such certificate; or

- (b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

- (4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force. Explanation. —For the purpose of this section,—

- (a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

- (b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.]

11. In the instant case, the applicant-Society had approached to the National Commission for Minority Educational Institutions against the Government of Maharashtra and the Director of Education,

Maharashtra for non-consideration of their proposal for recognition of their 'Sabiha Urdu Primary School,' District Nanded. The National Commission for Minority Educational Institutions has observed that the State Government cannot deny recognition to minority institutions on the ground that the State already has more such institutions than required and, therefore, the policy of the government not to permit the starting of any more institution would infringe the substance of the right guaranteed under Article 30. The Commission has further observed that, such a factor is irrelevant so far as minority institution is concerned. The Commission has referred T.M.A. Pai Foundation Vs. State of Karnataka with the observations made therein that the affiliation and recognition has to be made available to other institution that fulfills the conditions for grant of such affiliation and recognition to the private institutions. The Commission has further held that, by denying recognition as sought by the applicants, the State Government has violated educational rights of the minorities enshrined in Article 30(1) of the Constitution and accordingly directed the State Government to re-

consider the request of the petitioner for grant of recognition. The Commission has given such direction to the Government of Maharashtra by order dated 5.6.2007. However, in the year 2008, instead of granting recognition, Education Officer, Zilla Parishad, Nanded and Block Education Officer, Panchayat Samiti started interfering into the affairs of the school run by the minority institution. The applicants-institution constrained to institute R.C.S. No.295/2008 and accordingly the Civil Judge J.D., Ardhapur by judgment and decree dated 20.1.2011 decreed the suit and thereby restrained the defendants therein including the respondent-complainant herein permanently from interfering into the Management of the plaintiff's school.

12. The learned APP has vehemently submitted that those documents cannot be looked into and in terms of provisions of Section 239 of Cr.P.C., in case of a warrant trial before the Magistrate and even in terms of similar provisions of Section 227 of the trial before the Sessions Court, those documents cannot be considered.

13. In a case of ***Rukmini Narvekar v. Vijaya Satardekar and others*** (supra) relied upon by learned counsel for the applicant, in para 9 and 29 of the judgment, the Supreme Court has made the following observations:-

Per Altamas Kabir, J.:-

“9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in [Section 227](#) Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under [Section 482](#) Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording [Sections 227](#) and [228](#) the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.

Per Markandey Katju, J. :-

“29. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.”

14. In a case of Harshendra Kumar D.(supra) relied upon by the learned counsel for applicants, in paragraph no.25 of the judgment, the Supreme Court has made following observations :-

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”

15. It is thus clear that, in appropriate case, if, on the face of the documents which are beyond suspicion or doubt placed by the accused, accusations against him

cannot stand, it would be a travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court.

16. In my opinion, this is a rare case in which the Court can look into the material produced by the defence, which convincingly demonstrates that the entire prosecution case is absurd.

17. The provisions of Act of 1947 and the Rules of 1949 and provisions of National Commission for Minority Educational Institutions Act, 2004 and the judgment and order delivered by the National Commission for Minority Educational Institutions in Case No.1445/2006 and further decree of the civil Court in R.C.S. No.295/2008 which has attained the finality, now convincingly demonstrates that the allegations made in the complaint though accepted as it is, no case is made out against the applicants in any manner and, further on the basis of those material produced by the applicants-accused before this Court, it can be said that the entire prosecution case against the applicants is

absurd.

18. In view of the above discussion, I proceed to pass the following order.

ORDER

- I. Criminal application is hereby allowed in terms of prayer clauses “**B**” and “**D**”.
- II. Rule is made absolute in above terms.
- III. Criminal Application is accordingly disposed of.

sd/-
(**V.K. JADHAV**)
JUDGE.

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aaa/-