IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1507 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
VENKAT S/O. PANDURANG SURYAWANSHI
...
Advocate for Petitioner : Mr A R Kale
...
CORAM : V.K. JADHAV, J.
Dated: November 23, 2016
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PER COURT :-

1. Being aggrieved by the judgment and order dated 14.8.2015 passed by the Additional Sessions Judge, Latur in Criminal Revision No.16/2013, respondent state/original complainant preferred this writ petition.

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

Respondent herein is original accused in RCC No.225/2009. He has filed an application Exh.18 for discharge. Learned Magistrate has dismissed said application. Thus, respondent-accused has preferred revision before the Sessions Court. The learned Additional Sessions Judge, Latur by its impugned judgment and order dated 14.8.2015 allowed the

revision petition and thereby discharged the accused for the offences punishable under section 419, 468 of Indian Penal Code.

3. Prosecution story, in short, is that, there is one Education Society namely Shri Sant Tukaram Bahuuddeshiya Shikshan Sanstha at Sarola Tq. Ausa, Dist. Latur. Said Education society runs a High School at village Sarola namely Shriram High School, Sarola. Respondent-accused was the Head Master of the said school. The Society had moved an application to the District Education Officer at Latur seeking leave to suspend respondent-accused. Education Officer has granted permission on 27.8.2007 and on 29.8.2007 accused was suspended. Respondent accused had challenged the said order before this Court by filing writ petition no.5453/2007, however, said writ petition was also dismissed on 12.10.2007. Thereafter, inquiry was conducted against respondent-accused and by order dated 24.12.2007 he came to be dismissed from the service. By the same order, first informant was asked to look after the charge of Head Master of the said High

School. Said first informant, however, lodged FIR alleging therein that despite dismissal, respondent-accused used to come regularly in high school and work as head master. Even he put his signatures in that capacity on the salary bills for the month of August 2008 and September, 2008. Even concerned authority did not sanction the salary bills of September, 2008. Even respondent accused has made communication in the capacity of the head master with the District Education Officer, Latur on various dates. Even respondent accused has made a correspondence with the Deputy Director of Education, Latur as Head Master and also made correspondence with the Education Board at Ausa office for collection of the examination papers. He also withdrawn the amount of grant as headmaster towards the school nutrition food scheme. Even he had withdrawn scholarship amounts of the students. It has alleged that accused had almost done all the things even though he had no authority to act as headmaster and cheated everybody by personation. On the basis of said F.I.R. crime bearing no.130/2008 came to be registered at Ausa police Station and after due

investigation concerned police station has submitted charge sheet against respondent accused for the offence punishable u/s 419, 468 of Indian Penal Code.

4. The learned APP submits that, respondent/ accused has posed himself as headmaster and thus he has committed an offence of cheating by personation. The learned APP submits that even respondent-accused by preparing a false document by posing himself as headmaster committed an offence of forgery. The learned APP submits that, the learned Magistrate has rightly rejected the application Exh.18 filed by the respondent-accused seeking discharge however, the learned Additional Sessions Judge, Latur by its impugned order allowed the revision application and erroneously discharged respondent-accused.

5. Even though respondent-accused duly served, none appears for him.

6. On careful perusal of the record and the impugned order passed by the learned Additional Sessions Judge, Latur, it appears that, the learned Additional Sessions

Judge has not considered the documents produced by respondent accused for the first time before the court. Respondent-accused had produced certain documents before the court including the order of State of Maharashtra dated 17.2.2010. By the said order, State of Maharashtra set aside the dismissal order of respondent-accused and continued him on the post of Head Master from the date of his suspension i.e. 29.8.2007. Even though the said document is having unimpeachable character and could have been legally translated in the evidence, in the light of the ratio laid down by the Supreme Court in case of Helios and Matheson Information Technology Limited and others Vs. Rajeev Sawhney and another, reported in 2012 (1) Supreme Court Cases (Crim) 767, the learned Additional Sessions Judge has not considered said documents.

7. The learned Additional Sessions Judge in paragraph no.13 of the judgment has given reference to statements of a clerk and some teachers of the school recorded by the I.O. during the course of the investigation. Needless to say that in view of the

provisions of section 239 of Cr.P.C., the Magistrate can consider the police report and documents sent with it under section 173. It reveals from the statement of said clerk that school had no document from the higher authority showing that Shri A.K. Jadhav (first informant) was given charge of Head Master. Said clerk has further stated in his police statement that he himself prepared salary bill and other documents and taken signatures of respondent-accused thereon as Head Master. Even, he had made correspondence taking signatures of the respondent-accused as Head Master. Even, teachers in their police statement stated that there is dispute between respondent-accused and first informant about the post of Head Master.

8. In the backdrop of these facts, the learned additional Sessions Judge, after considering the definition of cheating by personation as prescribed under section 416 of I.P.C. found that the respondent accused had never posed himself as A.K.Jadhav (first informant). on the other hand, respondent- accused signed all the documents as referred above in the

capacity as head master and, even staff members as stated by them before police during the course of recording of their statement, placed salary bills and other documents for signature before the respondent-accused. Learned Additional Sessions Judge has, therefore, rightly held that ingredients of cheating by personation are lacking and, therefore, charge of 419 levelled against the accused is groundless.

9. So far as section 468 of IPC is concerned, it speaks about forgery for the purpose of cheating. Since charge of cheating itself is groundless, the learned Additional Sessions Judge has, therefore, rightly held that there cannot be an offence of forgery for the purpose of cheating. Even admitting the prosecution case as it is, I do not find that respondent-accused has dishonestly or fraudulently made a false document.

10. In view of the above, writ petition is devoid of any merits. Same is liable to be dismissed. Hence, following order.

O R D E R

I. Writ Petition is hereby dismissed.

(V.K. JADHAV, J.)

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