

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1929 OF 2010**

Mrs.Kavita Subhash Navande and anr. ...Applicants
 v/s.
 State of Maharashtra & ors. ...Respondents

Mr.Kedar J. Patil for the Applicants.
 Dr.F.R.Shaikh, APP for the Respondent No.1.

**CORAM : A.S.OKA &
 A.A. SAYED, JJ.**

DATED : 1 SEPTEMBER 2016

ORAL JUDGMENT: *(Per A.S.Oka,J.)*

Called out for final hearing. The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") is for quashing the First Information Report registered at the instance of the second Respondent for the offence punishable under section 420 read with section 34 of the Indian Penal Code.

2. It is pointed out in the Application that the Zilla Parishad of Satara published a tender notice. Quotations were invited by the said Zilla Parishad for teaching Judo/Taykondo to the students in schools and colleges in rural areas. A training was to be given every day for a period of two hours spread over three months. According to the case of the

Applicants, the second Applicant submitted an offer, which was accepted. The case made out in the Application is that, accordingly, the second Applicant appointed the instructors/teachers and completed the training schedule. The impugned FIR is at the instance of the second Respondent. The second Respondent is an instructor/teacher appointed by the second Applicant. The allegation in the statement, on the basis of which the First Informant Report is registered, is that though the instructors appointed by the second Applicant completed the job of giving training by visiting various villages, for a period of eight months, the agreed remuneration was not paid to them. The only allegation is that by not paying the remuneration, the second Respondent has been cheated.

3. Learned Counsel appearing for the Applicants pointed out the correspondence annexed to the Application which shows that the amount could not be paid to the second Respondent as the Zilla Parishad, Satara did not disburse the amount payable to the Applicants. His submission is that in any event, taking the statement of the second Respondent as correct, an offence under section 420 is not at all made out.

4. Learned APP opposes the submissions and submitted that no interference is called for.

5. We have given careful consideration to the submissions. In the statement of the second Respondent, on the basis of which the First Information Report is registered, it is stated that the first Applicant who was the Chairman of Swyamsiddha Association was in the Government employment and therefore, the tender form was submitted by the second Applicant. Thus, the statement proceeded on the footing that the tender was granted by the Zilla Parishad to the second Applicant. It is not the case made out by the second Respondent that there was any inducement or representation on the part of both the Applicants, on the basis of which he accepted the job. The only allegation is that by not paying the remuneration, the Applicants have cheated the second Respondent and other instructors.

6. In the present case, it is not even alleged that there was any inducement on the part of the Applicants on the basis of which the second Respondent and other instructors acted. Even the second Respondent was aware that the work was entrusted to the second Applicant by the Zilla Parishad after following the tender process. Apart from the fact that the documents on record show that the amount did not come from the Zilla Parishad, even taking the statement of the second Respondent as correct, ingredients of cheating under section 415 were not present.

7. Therefore, the Application must succeed. However, we may clarify here that we have examined the controversy only for the purpose of deciding the issue whether the offence alleged against the Applicants is attracted or not. We have made no adjudication on the question of liability of the Applicants to pay the remuneration to the second Respondent. All contentions of the parties in that behalf are kept open.

8. Subject to what is observed above, we pass the following order:

ORDER

Rule is made absolute in terms of prayer clause (b), which reads thus:

“(b) that u/s 482 of the Criminal Procedure Code this Hon'ble after perusal of the same be pleased to quash and set aside the said FIR dated 18-11-2009 lodged at Satara City Police Station, Satara at C.R.No.695/09 against the Applicants.”

All concerned to act on an authenticated copy of this order.

(A.A. SAYED, J.)

(A.S.OKA, J.)