

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

CRIMINAL WRIT PETITION NO. 105 OF 2017

Sow. Nishigandha Ramnath Chobhe,
Age 42 years, Occu. Advocate,
R/o N-9, M-2, HUDCO, Aurangabad,
CIDCO, Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
through Osmanpura Police Station,
Aurangabad
2. Rahul s/o Shankar Wadhwe,
Age 34 years, Occu. not known,
R/o C/o Bharat Fulare,
Gat No.52/1, Wadgaon Kolhati,
Ranjangaon, Waluj MIDC,
Aurangabad
- (3) Sow. Archana w/o Rahul Wadhwe, } Resp.no.3 deleted
Age 32 years, Occu. Shyam Adhav, } as per leave of the
Plot No.101, Dwarkapuri, Eknath } Court dt.25.1.2017
Nagar, Osmanpura, Aurangabad } .. Respondents

Mr A.M. Gholap, Advocate for petitioner
Respondent no.2 - in person
Respondent no.3 is deleted as per leave granted by the Court on
25.1.2017

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING
THE JUDGMENT : 31st August 2017**

**DATE OF PRONOUNCING THE
JUDGMENT : 13th September 2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
petition is taken up for final disposal at admission stage.

2. This is a petition under Article 226 of the Constitution and under Section 482, Cr.P.C., for quashing F.I.R No.231/2016, registered against the petitioner and one person, on 10.10.2016 at Osmanpura Police Station, Aurangabad under Sections 420, 467, 464, 468, 471, 177, 181, 182 read with Sec.34 of the Indian Penal Code.

3. Heard learned Advocate Mr Gholap for the petitioner, Mrs Diggikar, learned A.P.P. for respondent no.1 and respondent no.2 - in person.

4. For deciding this petition, the essential facts may be stated as follows :

5. Respondent no.3 - Archana (now deleted), married to respondent no.2 - Rahul in 2009 as per Baudha religion. The couple was blessed with one daughter and had normal married life up to 2012. Thereafter, there were severe differences between their matrimonial relations, which resulted in filing of various types of litigations. Petitioner Nishigandha Chobhe is Advocate and was representing Archana in various matters. Respondent no.2 - Rahul filed a divorce petition and also petition for restitution of conjugal rights and for custody of child in Family Court, Aurangabad. Respondent no.3 - Archana appeared in the matter through the applicant - Advocate Chobhe. In the said proceedings, relief of interim injunction was claimed by Archana under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act' for brevity). She produced one report submitted by her to the Protection Officer appointed under the D.V.

Act. This report was sent by the petitioner by R.P.A.D. to the Protection Officer, namely Child Development Project Officer, Aurangabad. The information in this application relating to domestic violence and the reliefs claimed by Archana was filled up by Archana or her Advocate and it was signed by Archana. She also mentioned the various types of reliefs, she wanted to claim. At the end of the page, a rubber stamp having words 'Tahsildar, Aurangabad' is impressed on the letter of Protection Officer. It was not original copy but photocopy of the paper bearing stamp showing words 'Tahsildar, Aurangabad'. The postal receipt of acknowledgment showed that it was forwarded by the petitioner. These facts are not in dispute. Respondent no.2 lodged F.I.R. dated 10.10.2016 at Osmanpura Police Station, Aurangabad alleging that by sending such application bearing stamp of Tahsildar, his wife Archana and her Advocate Chobhe (petitioner) have committed offences of forgery cheating etc. Police Inspector, Osmanpura Police Station, Aurangabad registered crime for the offences punishable under Sections 420, 467, 464, 468, 471, 177, 181, 182 read with Sec. 34 of Indian Penal Code. Hence this petition.

6. Respondent no.2 and learned A.P.P. Mrs Diggikar argued that the act of the petitioner and respondent no.3 amounts to forgery and other offences. They have misrepresented that Tahsildar had sent the said application and they have cheated the Protection Officer. Respondent no.2 as party-in-person also made several submissions making certain allegations against the petitioner, which has no concern while deciding the present petition.

7. It is not disputed that Tahsildar was a Protection Officer till 2012. Thereafter Child Development Project Officer has been appointed as Protection Officer and Tahsildar has no role to play under the provisions of D.V. Act.

8. The only question for our consideration is whether the sending of impugned communication by respondent no.3 through the petitioner to the Protection Officer amounts to the offences alleged or not ?

9. We find that the Tahsildar had no authority whatsoever under the D.V. Act since 2012. The explanation by the petitioner and her client is that photocopies of old form having rubber stamp of 'Tahsildar, Aurangabad' were available in photocopy centres and same was inadvertently used. The words 'Tahsildar, Aurangabad' remained to be scored.

10. We find that respondent no.3 Archana was not going to get any benefit by sending a form bearing words 'Tahsildar, Aurangabad' at the bottom, to the Protection Officer under D.V. Act. Tahsildar has no authority, no concern in any proceedings under D.V. Act since 2012. The form was sent in 2016. In fact, when Archana was in a position to file the application before the Judicial Magistrate, First Class, it was unnecessary for them to forward the application to the Protection Officer. The provisions of Section 12 of the D.V. Act, which permit the Protection Officer to file report on behalf of the victim are made with an intention that when the aggrieved person is unable to approach the Court any person can move the Protection Officer for securing the

necessary reliefs to the victim. Section 9 of the D.V. Act reads as follows :

“9. Duties and functions of Protection Officers - (1) It shall be the duty of the Protection Officer -

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of the domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter

home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

2. The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act."

11. The entire Act shows that it is the Judicial Magistrate who has all the powers to grant the reliefs and the role of Protection Officer is subsidiary. When the aggrieved person can directly approach the Magistrate, the role of Protection Officer becomes insignificant.

12. The respondent no.3 and the petitioner, by sending this application to the Protection Officer, nowhere represented that this application was sent by the Tahsildar, Aurangabad. The statement of Protection Officer shows that there was no misrepresentation made to it and he was no way misled on receiving such report. Even the Judicial Magistrate, before whom the relief of injunction was claimed

was also not misled by production of copy of this communication. The order of learned Judge, Family Court, Aurangabad shows that it is based on other material and in no way based on this report.

13. It is nobody's case that report was to be sent by Tahsildar.

14. The definition of forgery as per Section 463 of I.P.C. is as follows:

“463. Forgery – Whoever makes any false documents or false electronic record of part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

15. Thus, forging a signature on a document or alteration in the document either by way of deletion of any part or addition of any part or changes in any material particulars will amount to forgery, if and only if those are made with mens rea i.e. an intention or knowledge to cause damage or injury to any person or to support any claim or title or to commit fraud. In the present case, the petitioner or respondent no.3 were not likely to get any benefit by using the form bearing photocopy impression of rubber stamp of 'Tahsildar, Aurangabad'. The petitioner and respondent no.3 Archana cannot be said to have any mens rea to commit forgery.

16. For commission of any offence, there is necessity of *actus reus* and *mens rea*. We find that in the present case, both the ingredients

are missing. There is no forgery of signature or use of round stamp of Tahsildar or attempt to mislead anybody that the letter was issued by Tahsildar. Besides, the Tahsildar had no authority. Hence, there was no *actus reus*. Since respondent no.2 was very much aggrieved by the proceedings filed by his wife with the help of the petitioner and various reliefs obtained by her, he has filed the F.I.R. The police should have applied their mind and should not have mechanically registered the crime and investigated the same. We find that continuation of these proceedings will be abuse of the process of Court. The facts taken at the face value do not make out all ingredients of any offence. Hence, the present proceedings are liable to be quashed. Hence the order :

ORDER

(I) The Criminal Writ Petition is allowed. The proceedings initiated by F.I.R. No.231/2016 registered at Osmanpura Police Station, Aurangabad 10.10.2016 against the petitioner under Sections 420, 467, 464, 468, 471, 177, 181, 182 read with Sec.34 of the Indian Penal Code are hereby quashed as against the petitioner.

(II) Rule is made absolute in above terms. There shall be no order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)