

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

CRIMINAL WRIT PETITION 214 OF 2016

Devidas S/o Lokdoji Kadam
Age 49 years, Occ : Service
working as Headmaster,
R/o Shri Sant Govind Smarak
Secondary and Higher Secondary School
at village Wanjarwada, Tq. Jalkot
Dist.Latur

.. PETITIONER
[Orig.Accused]

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
[Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay
Bench at Aurangabad]
- 2] The Deputy Superintendent
of Police, Anti Corruption Bureau
Near Collector Office, Latur
- 3] Shri Sumant S/o Shridharrao Kulkarni
Age 54 years, Occ : Service
R/o Shri S.Govind Smarak S.
Wanjarwada, Tq. Jalkot,
Dist.Latur.
- 4] Shri Sant Govind Smarak Shikshan
Sanstha at village Wanjarwada,
Tq. Jalkot, Dist.Latur
Through its Secretary
Shri Kisanrao S/o Shankarrao Keede

..RESPONDENTS

Mr.R.N.Dhorde,Senior Advocate I/b Adv.Mr.Vikram Dhorde for Petitioner.

Mr.S.P.Deshmukh, APP for Respondents 1 and 2 – State.

Mr.Prashant Nagargoje h/f Mr.R.J.Godbole,Adv. for respondent No.3.

Mr.V.D.Gunale,Adv. for respondent No.4.

**CORAM : S.S.SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 13/11/ 2017.
PRONOUNCED ON :12/12/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

Rule. The Rule is made returnable forthwith. Heard finally with the consent of the parties.

2] This is a Petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C. praying for quashment of the FIR bearing CR.No.3014/2014 registered with Jalkot Police Station, District Latur for the offences punishable under Sections 13(1)(d) read with Section 7 and punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act for short), which is registered on 20/8/2014.

3] Shortly stated, the facts leading to the filing of the FIR are to the effect that the Respondent no.3 has been serving in Shri Sant Govind Smarak Madhyamik and Ucha Madhyamik Vidyalaya, Vanjarwada, Tq.Jalkot. In the year 2013-14 he was absent from the duty and his pay for the period of absence was not drawn. The petitioner has been working as a Headmaster in the school. It is alleged that in order to be able to draw the salary for the period of absence, the petitioner agreed to approve the period of absence as a

medical leave and then to draw a bill for the salary of the relevant period. However, the petitioner demanded Rs.600/- for submitting the bill online. The Respondent No.3 therefore, approached the Anti Corruption Bureau and informed the matter.

4] It appears that the ACB then verified the allegations by tape recording the conversation between the petitioner and the Respondent No.3. Having confirmed about the demand, as usual, a trap was laid on 20/8/2014 and the petitioner was allegedly trapped red-handed while accepting cash amount of Rs.600/- in the form of currency notes smeared with anthracene powder at about 13.05 hrs. Accordingly, the formal FIR was recorded and the impugned crime was registered as mentioned hereinabove, which is under challenge.

5] We have extensively heard the learned Senior Advocate for the petitioner, the learned APP for the Respondents 1 and 2, the learned Advocate for the Respondent No.3 as also the learned Advocate for the Respondent No.4. We have also with their able assistance perused the entire record, affidavits in reply and counter affidavits. We have also perused the police papers.

6] According to the learned Senior Advocate for the petitioner, even if tape recorded conversation is perused, there is absolutely no iota of any demand having been raised/made by the petitioner which is a *sine qua non* for constituting the offence punishable under Section 13(1)(d) and 13(2) of the Act. According to the learned Senior Advocate unless there is a *prima facie* material to show that the petitioner had raised any demand, the prosecution must fail and it would be a sheer abuse of process of law if the petitioner is made to

face the trial in the absence of such material. In support of his submission, the learned Advocate also referred to the decisions in the case of **(1) M.R.Purushotham Versus State of Karnataka; (2015) 3 SCC 247 (2) B.Jairaj V/s State of Andhra Pradesh; (2014) 13 SCC 55 and (3) Satvir Singh V/s State of Delhi; (2014) 13 SCC 143.**

7] The learned Senior Advocate for the petitioner further adverted our attention to the facts that there has been a long standing dispute on account of having control over the management of the school. Even the legitimate right of the petitioner to the post of Headmaster was tried to be denied and he had to approach this Court by filing Writ Petition No.5801/2008. It is only after the intervention of this Court in the Writ Petition that the petitioner was appointed as a Headmaster. The cousin of the Respondent No.3 has been attempting to have a control over the management. He alongwith the Respondent No.3 also burnt the school record and a complaint was lodged by the Supervisor of the school on 6/2/2010 (Exh.D) specifically pointing out that he had seen the Respondent No.3 and his cousin coming out of the school premises immediately after he saw flames coming out from the school office. On the basis of such report an offence was also registered against them. Thus according to the learned Senior Advocate, the instant crime has been registered as a fall out of the long standing dispute. The impugned crime has been got registered with an ulterior motive to harass the petitioner out of sheer vengeance.

8] The learned Senior Advocate for the petitioner also laboured to point out that according to the Government norms, the salary of the staff of the school can be drawn only by submitting the bills in

electronic form. There was no electricity in the school and all these bills had to be submitted online through an outsider service provider by name Shri Rokadeshwar Online Services. This used to cost Rs.600/- per bill. As is apparent from the tape recorded conversation between the Petitioner and the Respondent No.3, the former had only informed the latter to pay such charges to the service provider and that is why the amount of the alleged bribe is also Rs.600/-, which is not a sheer coincidence. In support of his such submission, he pointed out few cash memos (Exh.Q Collectively) showing that for submission of bills online, Shri Rokadeshwar Online Services had charged Rs.600/- each. In support of his submission, he also pointed out the documents in the form of the complaint (page 40) lodged by the Supervisor after he noticed that the office of the school was on fire, that in that statement he had specifically mentioned that the electricity supply to the school was stopped for about a year. He also pointed out the statements in the affidavit in reply filed on behalf of the Respondent No.4 school (page 268) and the notice issued by the Maharashtra State Electricity Distribution Company Ltd.(Exh.R-1, page 273) wherein it has been mentioned that there was no electricity supply to the school since it had not cleared dues since the month of September 2009. Thus according to the learned Advocate, this circumstance clearly indicates that in all probabilities, even if it is assumed for the sake of argument that the Petitioner had demanded and received Rs.600/- from the Respondent No.3, it was towards the payment of charges for submission of the bill online through the outside service provider and not by way of any gratification.

9] The learned Advocate for the Respondent No.4 adopted the submissions of the learned Senior Advocate for the Petitioner.

10] As against this, the learned APP as also the learned Advocate for the Respondent No.3 vehemently opposed the Petition. According to them, the fact of alleged demand and acceptance of the bribe amount is a pure question of fact and the prosecution is entitled to substantiate it only at a full-fledged trial and the material pointed out by the learned Advocate for the Petitioner cannot be scanned at this juncture, looking for a complete proof of demand and acceptance. The learned APP and the learned Advocate also pointed out that the decisions of the Supreme Court cited by the learned Senior Advocate for the Petitioner only lay down a principle which can be followed at a full-fledged trial and this being a proceeding merely for quashment of the FIR/Crime, it would be hazardous to draw any final conclusion based upon whatever material that has been produced on record, without extending any opportunity to the prosecution to prove its case. They also pointed out that this is not the apposite stage to scan the evidence threadbare which can happen only at a full-fledged trial. It also cannot be expected of this Court to go into the minute details about availability or otherwise of electricity supply and to consider a possible defence at this stage. According to them, whether there has been a long standing dispute in the management of the school and whether this is a case which is a fall out of such dispute are the matters which should be left to be decided by the trial Court. Lastly they pointed out that after considering the material collected during the course of investigation, even the sanctioning authority after having applied its mind has accorded sanction to prosecute the Petitioner and therefore, it will not be appropriate to ignore this circumstance.

11] Indeed, the guidelines for invoking the inherent powers of this Court in quashing the FIR have been laid down in the catena of decisions of the Supreme Court. The decision in the case of **State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604**, has been followed as a guiding factor. Though the categories in which FIR/Crime can be quashed have been laid down, the list is not exhaustive and still, with respect, it helps the High Courts in deciding the matters of this kind. Suffice for the purpose to reproduce the observations in Paragraph No.108, which read thus :

“108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying

an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3] Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4] Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5] Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6] Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7] Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12] Bearing in mind these observations, let us now turn to the facts in the matter in hand. Taking up the first argument of the learned Senior Advocate for the Petitioner and the decisions of the Supreme Court cited by him, there cannot be any dispute that in order to establish the offence punishable under Sections 13(1)(d) read with Section 7 and punishable under Section 13(2) of the said Act, a proof of demand as well as acceptance of the bribe amount is a must. However, careful reading of these decisions would reveal that in all those proceedings, the matters had reached the Supreme Court after a full-fledged trial and there was an opportunity to the trial Court as

well as the superior Court to scan the evidence laid by the prosecution and to conclude that the evidence was not sufficient to establish the alleged demand and acceptance. In the matter in hand, however, we are at a preliminary stage where there won't be any opportunity to the prosecution to lead evidence and attempt to establish both these ingredients constituting the impugned offences. In our considered view, therefore, simply by referring to the transcript of the tape recorded conversation, which is pointed out by the learned Sr. Advocate for the Petitioner, it would be hazardous to reach a conclusion that the conversation does not depict/corroborate the alleged demand. The prosecution deserves an opportunity to establish such a demand and acceptance, may be on the basis of ocular evidence independently of such tape recorded conversation which has been recorded merely to verify correctness or otherwise of the information lodged by the informant. Therefore, with respect, to the submissions made by the learned Senior Advocate for the Petitioner, this Court cannot simply on the basis of such tape recorded conversation jump to a conclusion that there was no demand.

13] Similar is the case with the argument of the learned Senior Advocate for the Petitioner as regards online submission of salary bills and the Government Resolution mandating it, as also the fact of absence of electricity supply or otherwise in the school at the relevant time. The Petitioner has produced certain documents referred to hereinabove to show that there was no electricity supply to the school. However the period mentioned in the complaint lodged by the Supervisor (*supra*) refers to a period of one year prior to the date on which the office of the school was set on fire in the year 2010. Whereas the letter of the Maharashtra State Electricity Distribution

Company Ltd. (supra) refers to a period of the year 2011. In the instant matter, the relevant period is the year 2014. Besides, even the Respondent No.3 has been able to produce a similar document showing that there was electricity supply available to the school when it was inspected by the Education Department, which inspection report he has obtained under Right to Information Act, 2005 (P-I) and the annexure thereto. The inspection report (page 351) specifically reads that the inspection was carried out on 20/5/2013 and electricity supply was found to be available. Again the petitioner has also produced another document in the form of letter of Maharashtra State Electricity Distribution Company Ltd. dated 16/3/2017 (Exh.P-v) (page 300) mentioning that the electricity supply of the school was disconnected in the month of February 2011 permanently. In view of such inconsistent material, unless the fact whether there was electricity supply available in the school at the material time, or whether salary bills had to be submitted online, through a service provider outside the school are pure disputed questions of fact. In our considered view, it will not be apt to scan such documents and reach a conclusion either way and it would be better if it is left open for the trial Judge to take into consideration all these facts. The fact remains that this being a pure question of fact, one cannot reach a conclusion either way. Since we do not have the opportunity to ascertain whether this material would be placed before the trial Court at all and whether it would be established in which way. We therefore, deem it apposite to leave it to the trial Judge.

14] For all these reasons, we do not find that the present case falls into any of the categories laid down in the case of Bhajanlal (supra).

15] Apart from the above state of affairs, we also deem it necessary to point out that already the competent authority has accorded sanction to prosecute the Petitioner apparently after applying his mind. The Director of Education being such a competent authority, who has apparently considered the material collected during the course of investigation, it would not be appropriate if we invoke the powers to quash the FIR at this stage. Already enormous time has been lost since the day the Petitioner was allegedly trapped. It is too late in the day to interfere in the legitimate prosecution which is duly substantiated by the fact of passing of the sanction order by the Officer of the rank of Director of Education.

16] As a last resort, the learned Advocate for the Petitioner also pointed out a decision of the Division Bench of this Court on 21/10/2015 in Criminal Writ Petition No.1197/2015 in the case of Dr.Ramchandra Munjaji Bhise V/s The State of Maharashtra and others, wherein, in similar set of facts, according to the learned Senior Advocate for the Petitioner, this Court had rightly quashed the FIR.

17] We have carefully gone through the judgment of the Division Bench in the aforementioned case. Though the facts are similar in the matter in Writ Petition No.1197/2015 and the one in the matter at hand, those are not same. In our considered view, the conclusion reached in that matter was based on the facts and circumstances peculiar to the case before the Division Bench. With respect, we have reached the conclusion based on the facts obtaining in the matter in hand and no parallel can be drawn as submitted by the learned Senior Advocate for the Petitioner.

18] In the result, the Writ Petition fails and is accordingly dismissed. The Rule is discharged.

19] The observations made hereinabove are prima facie in nature and confined to the decision of the present Petition only.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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