

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

CRIMINAL WRIT PETITION NO.254 OF 2015

Govind Digambar Bagde,
Age: 56 years, Occu. Service as
Principal of Mahatma Gandhi Mahavidyalaya,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur. **PETITIONER**

VERSUS

1. The State of Maharashtra.
2. Baburao s/o.Apparao Kadam,
Age: 80 Years, Occu.Agril. and
so called General Secretary
of Vichar Vikas Mandal,
Ahmedpur, Tq.Ahmedpur,
Dist. Latur. **RESPONDENTS**

...
Mr.V.D.Gunale, Advocate for the Petitioner
Mr.D.R.Kale, APP for the Respondent/State

...
**CORAM: S.S.SHINDE &
V.K.JADHAV, JJ.**

Reserved on : 24.01.2017
Pronounced on : 02.02.2017

JUDGMENT: (Per S.S.Shinde, J.)

1. Heard.
2. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3. This Petition is filed under Article 226 of the Constitution of India and Section 482 of Criminal Procedure Code, praying therein for quashing and setting aside the first information report bearing Crime No. 12/2015, registered against the petitioner, at Ahmedpur Police Station, Ahmedpur, for the offences punishable under Sections 177, 185, 403, 409, 420 and 464 of the Indian Penal Code.

4. It is the case of the petitioner that he has rendered continuous service as Senior Lecturer for about 25 years, and considering his excellent performance, qualification and experience, he came to be appointed on the post of Principal. After resuming the duties as Principal, with his sincere efforts the results of the examinations of the students of College are improved.

5. In the year 2013, the dispute started in the management. Two groups have filed their different change reports in the office of the Assistant Charity Commissioner claiming that, they are elected members of the trust. Due to afore-mentioned differences between two groups, the petitioner started receiving threats and there was interference in the smooth administration of the College, even by disturbing staff members by the said groups. One Mr.Sudhakar Nagargoje and Baburao Kadam issued letter to the petitioner on 31.10.2014 asking him to sign change report and to attend the office of the Assistant Charity Commissioner for submitting his consent letter stating that he is giving consent to the change report filed by them. The petitioner made communication to the higher authorities and informed about the threats received by him from afore-mentioned persons thereby asking him to give consent to

the change report filed by them in the office of the Charity Commissioner else he will face the criminal prosecution.

6. It is further the case of the petitioner that the group belong to the aforementioned two persons placed him under suspension on the ground that the petitioner is not cooperating them and supporting their stand. An alleged decision of the aforementioned two persons to place the petitioner under suspension was without any authority and in breach of principles of natural justice and relevant procedure. Respondent no.2 issued order placing the petitioner under suspension w.e.f.07.04.2014. The petitioner, being aggrieved by the said order, preferred Writ Petition before the Bombay High Court, Bench at Aurangabad. Simultaneously, the petitioner approached to the University Authority raising grievance about the said order placing him under

suspension. The University vide communication dated 02.05.2014 informed the management i.e. respondent no.2, that the petitioner is the Principal of the said College and the University has approved his appointment and he is working, therefore, the order placing him under suspension without prior permission from the University is illegal, and even appointment of Shri R.D.Bhamure as an Incharge Principal is also illegal.

It is further the case of the petitioner that respondent no.2 and his followers wants to remove the petitioner by hook or crook from his post since he is not following their directions. It is further the case of the petitioner that without following procedure, respondent no.2 dismissed petitioner from the service by an order dated 19.11.2014. The University and also the Joint Director of Education was communicated about such dismissal order.

7. Being aggrieved by the said order, the petitioner approached the Grievance Committee constituted under the University Act. The said Committee summoned both the sides and after hearing the parties, vide its communication dated 02.01.2015, informed respondent no.2 that without prior permission of the University, the Disciplinary Authority cannot suspend teacher, and therefore, petitioner's services will have to be treated as continuous and he is working on the post of Principal till date.

8. It is further the case of the petitioner that being unsuccessful in dislodging the petitioner from the post of Principal, respondent no.2 filed complaint before the Judicial Magistrate First Class, Ahmedpur, on 12.01.2015, alleging that the petitioner was residing in the premises situate in the Campus of College since 01.10.2009 to 16.11.2013, and even then he

has drawn the house rent from the Public Exchequer to the tune of Rs.4,48,109/- for the afore-mentioned period, and thus he has committed offence punishable under Sections 177, 183, 403, 409, 420 and 464 of the Indian Penal Code. The said complaint was registered as Misc.Criminal Application No.24/2015, and the learned Judicial Magistrate First Class directed the police to investigate the complaint under Section 156 [3] of the Criminal Procedure Code by issuing directions by its order dated 21.01.2015. It is further the case of the petitioner that without investigation the said complaint, the FIR came to be registered against the petitioner on 22.01.2015. Hence this Petition for quashing the FIR.

9. The learned counsel appearing for the petitioner submits that the petitioner is falsely implicated in the crime No.12/2015. The complainant has no locus standi to file

the said complaint, since his status as office bearer of the respondent trust is pending for approval with the office of the Assistant Charity Commissioner. The police authorities without making any investigation straightway registered the offence against the petitioner, who is the Principal, working in the reputed College with unblemished service record. It is further submitted that so far as the allegation of using of premises belonging to the society by the petitioner is concerned, the said College is having the classes of Senior College as well as Junior College as well as Common Entrance Test [CET]. There are two Hostels in the premises of the said College. The classes of 11th, 12th standard and CET are being conducted in the night hours also. There is a big computer lab in the premises, however, there was theft of near about 12 computers from the premises. The Principal is required

to attend and supervise even the night classes also upto 11.00 p.m. Those classes are being attended by the girl students also, therefore petitioner was required to stay in the College premises itself upto 11.00 p.m. every day. Considering such responsibility of the petitioner, the management by passing a Resolution in its meeting dated 31.05.2013 decided to provide the accommodation to the petitioner just like rest room, so that it will be convenient to the Principal to attend the College at night hours to monitor conducting of classes in the college and also to ensure the security of girl students. It is specific case of the petitioner that the decision of the management to provide two rooms to the petitioner for temporary period for aforesaid purpose in the interest of the students studying in the college cannot be interpreted or construed to mean that college has provided residential accommodation on

regular basis befitting the status of the post of Principal on which petitioner is working.

10. It is further the case of the petitioner that on request made by the management, the petitioner used the said accommodation for temporary period for afore-stated purpose, though it was not having necessary facilities.

11. The petitioner has taken premises on rent basis in the town, and simultaneously he was staying in the accommodation provided by the College for temporary period for monitoring classes conducted beyond college working hours so as to help out the students to prepare for common entrance test. Respondent no.2 and his followers made complaint to the Joint Director of Education as well as the Director of Higher Education alleging that the petitioner is using the

accommodation of the College free of cost and simultaneously he has drawn the house rent from the Government for the period from 01.10.2009 to 16.11.2013. On such complaint made by the respondent no.2 without calling any explanation from the petitioner or without providing any opportunity of being heard to him, the Joint Director of Higher Education, Nanded Region issued the communication to the petitioner on 24.01.2014, asking the petitioner to deposit the house rent and travelling allowances which was drawn by him from 01.10.2009 to 16.11.2013 in the account of Government. The petitioner submitted his detail explanation on 10.02.2014 to the Joint Director of Higher Education. In his explanation, he has specifically pointed out that on the request of management, he was staying in the College premises to monitor conducting of the classes and to ensure security of the girl students.

In fact, there are no constructed premises in the College campus to provide residential accommodation on regular basis to the Principal. He also pointed out to the authorities that he is already staying in the rental premises in the town and his family is staying there since from his appointment. He has also placed on record the rent note issued by the owner of said premises in which he stayed with his family. He, therefore, stated in his reply that there is no question of refund of House Rent Allowance [HRA] and Traveling Allowance [TA] to the Government. He also pointed out that due to the dispute in the management, the false complaints are made against him with a view to harass him, therefore the directions issued by the said authority to deposit Rs.4,48,109/- may be recalled.

12. It is further the case of the petitioner that, the Joint Director issued

communication on 17.05.2014 addressed to one of the complainant Dadasaheb Babasaheb Deshmukh, who was working on daily wages in the College. By said communication, it was made clear that the petitioner is having the accommodation in the town on rent basis and he has submitted the rent receipts to the authority. In such situation, it is difficult to hold that the petitioner was residing with his family in the college campus in two rooms. Even then the petitioner was directed to refund the HRA and TA by the Joint Director of Education by communication dated 22.09.2014. There was no alternative left with the petitioner due to withholding of his salary by the said authority, under compelling circumstances he started depositing the amount in installments.

13. The learned counsel submits that the petitioner has deposited entire amount as

directed by the Joint Director of Education in the public treasury. It is submitted that there is no cheating or fraud or criminal breach of trust on the part of the petitioner as alleged by the petitioner, but due to the false complaint by the rival group of the management to the Joint Director, such directions were issued for refund of HRA and TA. It is submitted that the petitioner has decided to challenge the order passed by the Joint Director of Education, directing him to deposit amount of Rs.4,48,109/- by initiating appropriate proceedings. It is submitted that filing of the complaint by the respondent no. 2 and registering FIR on the basis of the said complaint is abuse of process of law, inasmuch as respondent no.2 was not competent to file such complaint, and secondly allegation in the FIR / complaint are with vengeance and palpably false. It is submitted that due to lodging of said FIR with

frivolous allegations against the petitioner, injury is caused to his reputation.

14. The learned counsel appearing for the petitioner pressed into service exposition of law by the Supreme Court in the case of *State of Haryana V/s Bhajan Lal*¹ and submitted that 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. The learned counsel also invites our attention to the various documents placed on record which prima facie shows that as a matter of fact the petitioner is residing in the premises of one Advocate Mr.P.D.Kadam and to that effect rent receipts are placed on record. He further submits that, the petitioner has placed on record other

1 AIR 1992 SC 604

documents which would prima facie demonstrate that the allegations made against the petitioner by respondent no.2 are tainted with *mala fide*, since the petitioner did not agree to give consent before the Assistant Charity Commissioner for the change report submitted by respondent no.2. Therefore, the learned counsel appearing for the petitioner submits that the Petition deserves to be allowed.

15. On the other hand, learned APP appearing for respondent – State relying upon the investigation papers submits that the Investigation Officer has caused investigation and there appears to be substance in the allegation leveled against the petitioner, and therefore, the Petition may not be entertained.

16. We have heard the learned counsel appearing for the petitioner and the learned

APP appearing for the respondent – State at length. With their able assistance, perused the pleadings and grounds taken in the Petition, annexures thereto, reply filed by respondent no.1 and also affidavit in rejoinder filed by the petitioner and additional documents placed on record. It is not in dispute that pursuant to the notices issued by the Joint Director of Education, the petitioner has deposited entire amount as mentioned in the letter written by the Joint Director of Education. It is stated by the petitioner that he is aggrieved by the said direction, directing him to deposit the said amount and he has decided to challenge the said order.

17. Be that as it may, we do not express any opinion about such direction given by the Joint Director of Education or the petitioner's contention that such direction to deposit the amount of Rs.4,48,109/- was

wholly unwarranted in view of the fact that the petitioner did stay in the rented premises for which he had received the rent from the Public Exchequer. However, fact remains that the petitioner has deposited amount of Rs.4,48,109/- as directed by the Joint Director of Education. An issue whether the documents placed on record by the petitioner in the nature of rent receipts can be considered by this Court so as to form prima facie opinion while adjudicating the prayer for quashing the FIR is no longer res integra. The Supreme Court in the case of *Anita Malhotra Vs. Apparel Export Promotion Council and another*² has held that, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed on record by the accused and if it is

2 [2012] 1 SCC 520

considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 Cr.P.C. Therefore, certainly, so as to find out prima facie case this Court can look into such documents. We have perused the order dated 21.01.2015 passed by the Judicial Magistrate First Class, which is at page 32 of the compilation of the Writ Petition, reads as under:

Perused complaint. Heard the complainant and his adv.alleged offence are cognizable so this matter be sent to P.I. Police Station, Ahmedpur for investigation u/s.156 [3] offence.

The Magistrate while passing such order has not assigned single reason and directed investigation under Section 156 [3] of Criminal Procedure Code. The Bombay High Court Bench at Nagpur in the case of *State of Maharashtra Vs. Shashikant Eknath Shinde*³ has taken a view that it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence. In that view of the matter, it was incumbent upon the Judicial Magistrate First Class at least to assign brief reasons why he has reached to the conclusion to issue directions under Section 156 [3] of Criminal Procedure Code to order investigation.

18. Respondent no.2 is served on

3 2013 [4] Bom.C.R. [Cri.] 801

15.09.2015 by regular mode of service, report to that effect has been received on 29.09.2015. In addition to regular mode of service, the petitioner has also served respondent no.2 by private notice / service and to that effect affidavit of service is placed on record. However, respondent no.2 has chosen not to cause the appearance either in person or through advocate. There is no reply on record on his behalf. Therefore, the pleadings and grounds taken in the petition and also documents placed on record by the petitioner remained uncontroverted on behalf of respondent no.2.

19. The important ground that respondent no.2 has filed criminal complaint with *mala fide* and / or with ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge i.e. petitioner has refused to give consent to the change report

submitted by respondent no.2 in the office of Assistant Charity Commissioner, remained uncontroverted on behalf of respondent no.2.

On similar set of allegation like averred in the complaint, the Joint Director of Education had already taken appropriate steps and asked the petitioner to deposit an amount of Rs.4,48,109/-; and accordingly as submitted by the learned counsel appearing for the petitioner, the petitioner has already deposited the said amount. However, the petitioner wishes to challenge the order / directions issued by the Joint Director of Education, asking him to deposit afore-mentioned amount. In our opinion, the afore-mentioned proceedings initiated by the Joint Director of Education are of civil nature, and therefore, said proceedings can be taken to the logical end by the concerned parties.

20. At this juncture, it would be appropriate to refer the observations of the Apex Court in the case of *R.Kalyani Vs. Janak C. Mehta and others*⁴, which reads thus:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be

4 [2009] 1 SCC 516

exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its

jurisdiction in appropriate cases.
One of the paramount duties of the
superior courts is to see that a
person who is apparently innocent is
not subjected to persecution and
humiliation on the basis of a false
and wholly untenable complaint.”.

21. Therefore, keeping in view the aforesaid observations of the Supreme Court and the fact that the grounds taken in the Petition remained uncontroverted on behalf of respondent no.2, and also the Magistrate has not assigned any reason to order an investigation against the petitioner, we are inclined to allow this Petition and quash the FIR.

22. The Supreme Court in the case of *State of Haryana V/s Bhajan Lal [cited supra]* in para 108 has laid down categories of cases by way of illustration wherein the powers under Section 482 of Criminal Procedure Code can be exercised by the High Court either to

prevent abuse of process of any Court or otherwise to secure the ends of justice.

Para 108 of the said Judgment reads as under:

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 extraordinary 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 or 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 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 applicant.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable, 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.*

23. As already observed in the foregoing paragraphs that, the Joint Director of Education is making independent enquiry about the allegations which are similar to that of made in the complaint / FIR, and also the Magistrate has not assigned any reasons which would demonstrate that cognizable offence has been disclosed against the petitioner, and also from reading the averments in the complaint and grounds raised by the petitioner that respondent no.2 with mala

fide and / or with ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge, remained uncontroverted on behalf of respondent no.2. In our considered opinion, case of the petitioner would be partly covered in afore-mentioned categories 1 and 2 and would be completely covered under category 7.

24. Therefore, in the peculiar facts and circumstances of this case, we quash and set aside the First Information Report bearing Crime No.12/2015 registered with Ahmedpur Police Station, Ahmedpur, District Latur, for the offences punishable under Sections 177, 185, 403, 409, 420 and 464 of the Indian Penal Code. Hence, the Criminal Writ Petition stands allowed to above extent. Rule made absolute in terms of prayer Clause-C. Writ Petition stands disposed of accordingly.

25. However, we make it clear that the proceedings / action initiated by the Joint Director of Education against the petitioner, and pursuant to the directions issued by the said authority, the petitioner has deposited the amount of Rs.4,48,109/-, are the matters to be considered on civil side having civil consequences and the said direction/action or challenge to the said directions by the said authority asking the petitioner to deposit the amount would remain unaffected. While dealing with the said proceeding, neither the Competent Authority nor the petitioner will be entitled to rely upon the reasons assigned in this judgment or can make reference of the present proceedings.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE