

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

CRIMINAL WRIT PETITION NO. 285 OF 2010

Sharada Sharadrao Bhore,
Age 41 years, Occu. Agri.,
R/o Devadaithan, Taluka Jamkhed,
Dist. Ahmednagar

..Petitioner

Versus

1. The State of Maharashtra
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar
3. Raghunath Annasaheb Golekar,
Age 42 years, Occu. Agri.,
R/o Jamkhed, Taluka Jamkhed,
District Ahmednagar

..Respondent

Mr P.B. Shirsath, Advocate for petitioner
Mr S.J. Salgare, A.P.P. for respondents no.1 and 2
Mr N.V. Gaware, Advocate for respondent no.3

**CORAM : T.V. NALAWADE AND
A.M. DHAVAL, JJ**

DATE : 30th October 2017

ORAL JUDGMENT (Per T.V. Nalawade, J.)

1. The petition is filed for quashing of proceedings of R.T.C. No.8/2001 presently pending in the Court of Judicial Magistrate, First Class, Jamkhed, District Ahmednagar. It is a case filed by Police for offences punishable under Sections 465, 471, 420 read with Section 34 of Indian Penal Code. It can be said that provisions of Section 468 of Cr.P.C. also can be used.
2. Heard both sides.

3. The F.I.R. was filed by Raghunath Golekar - respondent no.3 herein in Jamkhed Police Station. The allegations are made in respect of record of a trust by name Shiv Pattan Gramin Vikas Mandal, which is running one educational institution. One Dr. Shirish Golekar was the founder of this institution and the first informant was a founder trustee. It is the contention that from 1993 they were running the institution, but Dr. Shirish Golekar died on 16th August 1998 and after that the Secretary and the Treasurer joined hands with present petitioner who is now shown as President of the trust and created false record. The allegations are made that they created false record of a meeting dated 14th April 1999 and they showed that in the meeting, present petitioner was elected as the President of the trust, and the previous Secretary and Treasurer were continued. Some more trustees viz. Nandkumar Vitthal Golekar (treasurer), Vilas Mote and Sudhir Chawne were shown as continued. After creation of record of resolution, resolution was sent to the office of Assistant Charity Commissioner, Ahmednagar. The change report was accepted and from that year till today, present petitioner is the President of said institution. It is the contention of the first informant that in the year 2009 when they collected some record, they realised that false record was created by the present petitioner and other accused, Secretary Nimbalkar. The F.I.R. was lodged on 23rd January 2010.

4. During investigation, Police recorded statements of the treasurer Nandkumar and some other trustees including the first informant. They specifically contended that not a single meeting was held and they never gave consent for formation of new body of the

trust. It is the contention of the first informant that other trustees have also contended that no such meeting was held and they have not signed on any document like resolution, minutes of meeting or consent letter. In view of the nature of allegations, during course of investigation, the specimen of handwriting were collected and were sent to handwriting expert. Due to stay granted by this Court the things are stalled.

5. Learned Counsel for petitioner submitted that petitioner had no role to play in the matter, as she was not even member of the trust in the past, during the time of previous President. This submission cannot help the petitioner at least at this stage. Learned Counsel for petitioner further submitted that the allegations do not constitute the offence of cheating under Section 415 of Indian Penal Code. He placed reliance on observations made in **Criminal Writ Petition No.507 of 2013 (Rajeshwarrao Vishwanathrao Patil and ors. Vs. The State of Maharashtra and ors.)**, decided on 22nd August 2013. This Court has carefully gone through the definition of cheating given in Section 415 of Indian Penal Code. Cheating includes intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit, if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. There is no necessity of delivery of any property for committing the offence of cheating.

6. The learned Counsel for petitioner submitted that the charge-sheet is filed for offences punishable under Sections 465, 471 of Indian Penal Code and the punishment provided for that is not more than three years and so the Police ought not to have initiated the action and Magistrate ought not to have taken cognizance. This submission is not acceptable for the offence punishable under Section 420 of Indian Penal Code, for which punishment is of seven years and in the present case. Section 468 of Indian Penal Code also can be used. Thus, point of limitation is not at all involved in the present matter. In the case of Rajeshwarrao and ors. (cited supra) on which reliance was placed, the facts were different. In the present matter, the false record is created by the accused, for getting control over management of institution. The allegation is that complainant was founder member and so he sustained loss.

7. Learned Counsel for the petitioner relied on the judgment of Apex Court reported in **AIR 1988 SC 709** in the case of **Madhavrao Jiwaji Rao Scindia and anr. Vs. Sambhajirao Chadrojirao Angre and ors.**, The facts of the said case were different. In the present matter, there is more than sufficient material to make out prima facie case for taking cognizance of the offences as mentioned above. It cannot be said that these are the false allegations and allowing the matter to go on will amount to abuse of process of law. The other submission made by learned Counsel for the petitioner that the first informant has other remedy like approaching the appropriate authority cannot help accused. When it is the case of creation of false record, the Court needs to go with presumption that there is allegation

for making out offence and so the other remedy available cannot change the things. This Court holds that no reliefs can be granted to the petitioner. In the circumstances, petition stands rejected.

8. Learned Counsel for the petitioner requested for continuation of interim relief. In the circumstances, this Court hold that it is not a fit case to continue the interim relief. Hence, the request is rejected. Rule is discharged.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

vvr