

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

CRIMINAL WRIT PETITION NO. 305 OF 2010

Shri. Ganesh Shivaji Markad,
Age : 35 years, Occu. Service (Tahsildar Jalgaon),
R/o. Jalgaon, Dist. Jalgaon. ... Petitioner

VERSUS

01. The State of Maharashtra,
Through Police Station Officer,
Parner Police Sttion, Tq. Parner,
Dist. Ahmednagar.
02. Subhash Yadav Auti,
Age : 35 years, Occu. Agri.,
R/o. Parner, Tq. Parner,
Dist. Ahmednagar. ... Respondents

.....
Mr N. V. Gaware, Advocate for the petitioner
Mr V. S. Badakh, APP for respondent No. 1
Mr S. B. Chavan, Advocate for respondent No. 2.
.....

CORAM : T. V. NALAWADE &
A. M. DHAVALA, JJ.

DATE : 13.10.2017.

ORAL JUDGMENT (PER A. M. DHAVALA, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. This petition under articles 226 & 227 of the Constitution of India r/w Section 482 is filed for quashing of FIR at C.R. No. I-248/2009, dt. 09.07.2009 registered against the petitioner with Parner Police Station, Ahmednagar for offences u/s 420, 465, 466, 467, 468, 471 r/w 34 of IPC and for quashing of orders of ld. JMFC, Parner, dt. 06.07.2009, to the extent of the petitioner.

3. The petitioner is a Tahsildar at Jalgaon and during 21.09.2008 to 01.03.2009 he was serving as Tahsildar at Parner. Respondent no.2 Subhash Auti, who claims to be social worker and resident of Parner, Ahmednagar, on 16.02.2009 filed a private complaint being M.A. No. 12/09 in the court of JMFC, Parner. As per complaint, accused no. 1 – P. B. Katare was Tahsildar, accused no. 2 & 7 were Naib-Tahsildars and accused nos. 3 to 6 & 8 were clerks in Tahsil Office, Parner during the period 04.06.2007 to 2008 (prior to the posting of the petitioner). He had made a complaint on 01.09.2008 (Lokshahi Din) before the Collector, Ahmednagar against accused nos. 1 to 8 to the effect that accused nos. 1 to 8 were involved in issuing bogus and false identity cards of senior citizens and thereby were earning lot of amount causing loss to the State Government. Earlier there was order of Collector on 24.01.2006

directing Tahsildars, SDOs & Civil Surgeons to issue identity cards to senior citizens after verifying their documents from recognized institutes. In violation of the said order, accused nos. 1 to 8 issued false & bogus identity cards by using the stamp of the State Government. On 01.09.2008, at the instance of the complainant, the Collector issued directions to the petitioner, who is shown as accused no. 9, to make inquiry in respect of those allegations and submit his report within 15 days. As per the complaint of the complainant, Bus Depot Manager of the Parner collected thousands of such bogus and duplicate identity cards and were handed over to the petitioner (accused no. 9). These cards were not noted in the register maintained by the Tahsil office. In spite of knowledge about these facts, accused no. 9 did not take any action. The complainant had handed over bogus identity cards to him and he was reminded of the orders for filing complaints against the concerned Naib Tahsildars & clerks but when complainant made inquiry with accused no. 9, he gave evasive answers and in spite of sufficient material and orders of the Collector, he avoided to take any action against accused nos. 1 to 8. He thereby created possibility of destruction of the important documents. The petitioner (A9) was thereby helping accused nos. 1 to 8. Hence, the complainant had gone to the police station to lodge FIR. Said FIR was not recorded hence the Miscellaneous Application

was filed for direction to the police officers u/s 156(3) of Cr.P.C. and other reliefs regarding production of relevant documents before the police officer by accused no. 9.

4. Mr Gaware, learned advocate for the petitioner argued that the alleged offences of issuing false and bogus identity cards are made against accused nos. 1 to 8 and not against accused no. 9. Accused no. 9 took charge of the post of Tahsildar at Parner on 21.09.2008. Thereafter he was also deputed as Election Officer at Ahmednagar on 30.09.2008 for holding Municipal Corporation Elections during the period of 07.11.2008 to 05.12.2008. Mr Gaware argued that the work assigned to him was voluminous and due to busy office schedule, he could not immediately take action. But before his transfer, on 21.02.2009 he has submitted necessary information in case of 800 to 830 bogus identity cards to the Collector, Ahmednagar. He had recorded statements of 83 citizens. Since accused no. 9 was thereafter transferred on 01.03.2009 from Parner to Jalgaon, he could not do any further work in the matter. Mr Gaware pointed out that the complainant was involved in retaining bogus solvency certificates which was produced in Crime No. II-7/2004 in the court of JMFC, Parner. The said solvency certificates purportedly issued by Tahsildar, Parner were not actually

issued by him and he has accordingly submitted a report to one Nitin Adsul on 29.01.2009 and on the basis of the same on 06.02.2009, criminal case was filed against respondent no. 2 u/s 420, 465, 466, 467, 468, 471 at Parner Police Station. Hence in order to wreak vengeance the respondent no. 2 has filed complaint and involved the present petitioner in the same.

5. Mr Badakh, learned APP has relied on the affidavit-in-reply filed by respondent no. 1. The Investigating Officer has reported that the petitioner had not produced the relevant registers of 2007 & 2008 nor had he taken any steps for filing complaint against the persons to whom and by whom the forged and bogus identity cards were issued. Mr S. B. Chavan, learned advocate for respondent no. 2 submitted that the petitioner was directed to make inquiry within 15 days and submit his report and take necessary action but even after 3½ months he had not completed inquiry and lodged any report. He has thereby helped the main accused persons in commission of the offence. Hence, the FIR cannot be quashed against the petitioner.

6. The points for our consideration with our findings thereon are as follows.

Sr. No.	Points	Findings
1	Whether the FIR against accused no. 9 deserves to be quashed?	In the affirmative.
2	What order?	The petition is allowed. The FIR is quashed against accused no. 9.

7. The admitted facts as disclosed from the arguments as well as from the documents on record are that, the main offence of issuing bogus and false identity cards was committed, before the petitioner took charge of his post as Tahsildar at Parner. He was noway connected with the main offences alleged against the accused nos. 1 to 8.

8. The Collector had directed the petitioner to hold an inquiry and submit his report within 15 days. The petitioner has produced documents to show that he was assigned election duty and he was out of Parner for election at Ahmednagar. Thereafter he has made inquiry but there is some delay in view of overwork. The petitioner has shown that the work given to him is voluminous as there were several cases of bogus identity cards of senior citizens. Still, on 21.02.2009, he has submitted a report after recording of statements of 83 witnesses.

9. The allegations against the petitioner at the most show some negligence in completion of the work in time. The petitioner has given explanation as regards delay, which is quite satisfactory. There is nothing on record to show that the delay in inquiry on the part of the petitioner was deliberate and intentional to aid the accused nos.1 to 8. The petitioner is holding a class-II post of Tahsildar and if he has committed any negligence in holding an inquiry or deliberately assisted the accused nos. 1 to 8 by not holding inquiry, then some action will have to be taken by his superiors namely Sub-Divisional Officer or Collector. Respondent no. 2, who is a third party, cannot come to the conclusion that accused no. 9 has deliberately committed delay in holding inquiry in order to help accused nos. 1 to 8.

10. Pertinently, respondent no. 2 has produced in court a solvency certificate purportedly issued by the petitioner and on inquiry the petitioner had submitted report that the said certificate was not issued by him. On the basis of such report of the petitioner, respondent no. 2 has been prosecuted. Within 10 days thereafter, the present complaint came to be filed. We find that, the present complaint filed against the petitioner is squarely covered by clause

(g) of the principles laid down in **State of Haryana and Ors. Vs. Ch. Bhajan Lal & Ors. AIR 1992 SC 604**, which reads as follows:

(g) 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.

11. If the Collector or SDO finds any fault with the work of the petitioner, a departmental inquiry can be held against him and if it is found that the petitioner has deliberately not complied with the directions of superiors in order to help accused nos. 1 to 8, report to that effect will have to be filed by revenue officers. In absence of any such report, the petitioner who was discharging his official duty, cannot be compelled to face the prosecution at the behest of third party which is interested in wreaking vengeance against the petitioner. We therefore hold that the allegations in the FIR do not disclose any material sufficient to take cognizance against the accused no. 9 - the petitioner. Hence the ld. JMFC erred in issuing directions to the police to register FIR against the present accused. Hence, we pass the following order.

ORDER

- (i) The Writ Petition is allowed.
- (ii) FIR at C.R. No. I-248/2009, dt 19.07.2009 registered at Parner Police Station for offences u/s 420, 465, 466, 467, 468, 471 r/w 34 of IPC is quashed against accused no. 9.

12. Rule made absolute in the above terms with no order as to costs.

[A. M. DHAVALA]
JUDGE

[T. V. NALAWADE]
JUDGE

sgp