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

CRIMINAL APPLICATION NO.2335 OF 2016

Dr.Kailas Laxman Patil,
Age: 43 Years, Occu: Service,
R/o. Pimplesi, Tal. Dharangaon,
Dist.Jalgaon. **APPLICANT**

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
M.I.D.C. Police Station, Jalgaon
Taluka & Dist. Jalgaon.

2. Arjun Latkan Patil
Age: 83 Years, Occu: Nil,
R/o. At/Post Masawad, Jalgaon
Tal. & Dist. Jalgaon. **RESPONDENTS**

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Mr.S.P.Brahme, Advocate for the applicant
Ms.S.S.Raut, APP for Respondent – State.
Mr.D.B.Shinde, Advocate holding for Mr.M.S.Deshmukh, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE,JJ.**

Reserved on : 31.07.2017
Pronounced on : 04.08.2017

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

1. This Application under Section 482 of the Criminal Procedure Code is filed for quashing and setting aside charge-sheet dated 11th August, 2015 in R.C.C. No.538/2015, which is pending before the Chief Judicial Magistrate, Jalgaon, to the extent of the applicant, bearing Crime No.273/2012 registered with M.I.D.C. Police Station, Jalgaon, for the offence punishable under Sections 463, 464, 465, 468, 471, 420 r/w.34 of the Indian Penal Code.

2. It is the case of the applicant that the applicant is working as Deputy General Manager in a Private Company at Jalgaon. He was not interested in the administration of the trust in question. He never actually participated in the election, meetings and submission of the change reports. Padmalay

Shikshan Prasarak Mandal is a trust. It does not have immovable properties. It does not run any school or college. It has assets of Rs.3000/- only. It was incorporated in 1992. For 17 years, there was no election. The founder body of the trust was comprising of 11 members. No elections were held periodically. Many members were died. Respondent no.2 was the Secretary.

3. It is further the case of the applicant that respondent no.2 and accused no.6 Gulabrao Patil took initiative in holding the elections in the year 2008. However, they are at the loggerhead. Gulabrao Patil is the sitting M.L.A. The allegations are against him and his brother and son. No specific allegations were made against the applicant. on 30.04.2008, the elections were held and accused no.6 Gulabrao Patil was elected as President. The applicant was elected as member only. He is not the

office bearers. Gulabrao Patil submitted change report No.968/2012 along with affidavits, consent letters and applications. Change Report No.968/2012 was compromised in Lok Adalat resultantly approving the change. Appeal No.28/2012 was dismissed by the Joint Charity Commissioner on 28th May, 2015. The objectors have approached the higher Forum.

4. It is further the case of the applicant that respondent no.2 lodged the complaint alleging that the documents filed along with change report were forged. The signatures of the dead persons were made on the documents. The affidavits were made by impersonation. The applicant secured anticipatory bail from this Court. On 11th August, 2015, the charge-sheet was filed and R.C.C.No.438/2015 is registered against the applicant and other five persons for the offence punishable under Sections 473, 474,

475, 468, 471, 420-E r/w.34 of the Indian Penal Code.

5. Learned counsel appearing for the applicant submits that there are general allegations in the FIR. There is no any specific role attributed to the applicant. Upon perusal of the charge-sheet, and its accompaniments, there is no any specific role or allegations against the applicant. The change report was placed in Lok Adalat. There are no allegations and incriminating material against him to proceed for the offence punishable under Sections 463, 464, 465, 468, 471, 422-E r/w.34 of the Indian Penal Code. The entire charge-sheet does not spell any overt act against the applicant except the general allegations that the offence was committed by the applicant along with other accused persons. For the said absurdity and vagueness the applicant is not liable to undergo the ordeal of trial. The

entire charge-sheet is in respect of the commission of offence by accused no.6, who is the President and other accused persons. There is no specific role attributable to the applicant. The applicant is not the active member of the trust. He was not reporting trustee of change report No.968/2012. The documents filed along with the change report were not prepared and executed by the applicant. There is no *prima facie* evidence to connect the applicant to the offence of forgery.

6. The learned counsel appearing for the applicant further submits that the applicant is reputed persons and highly educated. He is rendering services in a Private Company and holds a responsible post. The allegations against him are not plausible at any stretch of imagination. The complaint filed by respondent no.2 was not maintainable

in view of allegations of perjury leveled in the same. Respondent no.2 himself was responsible for convening the meeting. The complaint/FIR and charge-sheet as against the applicant are inherently improbable and smacks of *mala fides*. The charge-sheet cannot be entertained in view of the civil proceedings finalized by the Joint Charity Commissioner and pending before Higher Authorities. The present prosecution as an abuse of process of law in the teeth of those civil proceedings. In support of the aforesaid contention, learned counsel appearing for the applicant placed reliance upon the ratio laid down by the Supreme Court in the case of *GHCL Employees Stock Option Trust & Ors. Vs. India Infoline Limited & Ors.*[1], and also the judgment of the Bombay High Court Bench at Aurangabad in the case of *Rajeshwarrao s/o.Vishwanathrao Patil & Others Vs. The State of Maharashtra & Others in*

1 2013 [4] SCC 505

Criminal Writ Petition No.507 of 2013, decided on 22nd August, 2013.

7. On the other hand, learned APP appearing for the respondent–State invites our attention to the investigation papers, and also the charge-sheet, and the fact that already charge is framed. He submits that the applicant is named by the informant in the FIR. Along with accused no.6 Gulabrao Patil, he was also instrumental in forging the signatures of the persons, whose names are mentioned in the FIR namely, Maharu Kashinath Beldar and Tukaram Mohan Patil, though Maharu Kashinath Beldar is not alive; their signatures have been forged. The accused conspired with each other and committed the alleged offences. He submits that the allegations in the FIR gets support from the evidence collected by the Investigating Officer. It is submitted that the applicant filed Criminal Application No.4066/2014

[Kailas Laxman Patil Vs.The State of Maharashtra and another] taking exception to the FIR, however, said application was withdrawn, and consequently dismissed by this Court. Therefore, learned APP submits that the application may be rejected.

8. We have considered the submissions of the learned counsel appearing for the applicant and the learned APP appearing for the respondent-State. With their able assistance, we have carefully perused the allegations in the FIR, charge-sheet and it’s accompaniment. It is not in dispute that the charge is already framed by the trial Court. It appears that charge-sheet is filed on 16th June, 2016, and by this time the concerned Court might have proceeded with the trial. Upon careful perusal of the FIR, the name of the applicant along with other accused is mentioned. The allegations are serious in nature inasmuch as though Maharu Kashinath

Beldar was not alive, it appears that, on 20th April, 2008, the society issued agenda and his forged signatures were shown on the said agenda on 30th April, 2008 and general body meeting was called, and fabricated and forged proceedings were prepared by making forged signatures of Maharu Kashinath Beldar and Tukaram Mohan Patil. There is serious allegation that on 29th June, 2012, in the proceedings of Misc.Application No.968/2012 before the Civil Court at Jalgaon, in place of informant some other persons appeared posing that he is the informant, and affidavit was prepared thereby making the forged signature of the informant. It is alleged in the FIR that the applicant and other co-accused conspired with each other. Upon careful perusal of the documents, and in particular agenda of the meeting, the applicant has signed the said acknowledgment receipt of the agenda.

9. In that view of the matter, in our opinion, when the charge is framed and applicant sought permission to withdraw the Criminal Application No.4066/2014 [Kailas Laxman Patil Vs. The State of Maharashtra & another], which was consequently allowed to withdraw and dismissed as such. While withdrawing the said application, the applicant did not seek liberty to again approach the Court. Be that as it may, we have considered the contentions of the applicant on merits, and in the light of the charge-sheet and it's accompaniments, and allegations in the FIR, and the fact that charge is already framed; we are not able to persuade ourselves to entertain the prayer of the applicant, hence application stands rejected.

10. The observations made herein above are *prima facie* in nature, and confined to the adjudication of the present application.

The trial Court shall not get influence by the observations made herein before during the course of trial.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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