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

CRIMINAL APPLICATION NO.1950 OF 2005

1. Bandusing s/o Alam Chava,
Aged 55 years, Occ. Agriculture,
R/o Banjara Colony, Jintur,
District Parbhani
(deleted as per Court's order
dated 19/09/2016)
2. Syed Salim s/o Syed Azim,
Age: 45 years, Occu: Headmaster,
Saint Janardhan Vidyalaya,
Charthana, Taluka Jintur,
District Parbhani
3. Namdeo s/o Sukhlal Jadhav,
Age: 35 years, Occu: Teacher,
Saint Janardhan Vidyalaya,
Charthana, R/o Charthana,
Taluka Jintur, Dist. Parbhani ..APPLICANTS

VERSUS

1. state of Maharashtra
2. Suresh s/o Ramrao Deshpande,
Aged 40 years, Occu: Agri.,
R/o Charthana, Taluka Jintur,
District Parbhani
(deleted as per Court's
order dated 16/12/2016) ..RESPONDENTS

Mr R. N. Chavan, Advocate h/f Mr Vijay Sharma,
Advocate for applicants;

Mr A. D. Namde, Addl. Public Prosecutor for
respondent No. 1;

(2)

CORAM : N.W. SAMBRE, J.

DATE : 4th JANUARY, 2017

ORAL JUDGMENT :

Heard.

2. Respondent No. 2 – original complainant initiated Regular Criminal Case No. 128 of 1996 against the applicants alleging that applicant No.1 is the President of the Education Society, which runs and manages two schools, namely, Saint Janardhan Vidyalaya, Charthana and Jaidurga Adivasi Ashram School, Jintur. It is then claimed that his nephew Vishwambhar took education from 23-6-1993 to 11-7-1995 in Saint Janardhan Vidyalaya, Charthana, however, he was wrongly shown to be the student of Jaidurga Adivasi Ashram School, Jintur and was issued Transfer Certificate accordingly. It is further claimed by the respondent No. 2 in the complaint that such act on the part of the applicants-accused, has resulted into wrongful loss to the complainant and wrongful gain to the applicants, apart from Vishwambar was not admitted to any school based on the Transfer Certificate.

(3)

3. Learned Counsel for the applicants, while trying to make out a case for grant of relief would urge that original complainant Suresh came to be deleted on 16th December, 2016 as he has expired. As such, the proceedings are conducted by learned Addl. Public Prosecutor for and on behalf of the complainant while opposing the claim of the applicants for quashing.

4. Upon perusal of the contents of complaint and report submitted by Police Officer pursuant to the order passed by the learned Magistrate, what could be gathered from the record is nephew of the complainant got admission in some different school based on transfer certificate of Jaidurga Adivasi Ashram School. As a consequences whereof, there is hardly any material to prima facie infer any wrongful loss to the complainant or student Vishwambar.

(4)

5. Apart from above, there is hardly any material on record brought by the complainant to justify admission of Vishwambar in Saint Janardhan Vidyalaya, Charthana and not in Jaidurga Adivasi Ashram School, Jintur. Once there is no material on record to prima facie infer about making out cognizable offence, in my opinion, the Magistrate ought not to have pass an order of issuance of process without being satisfy about ingredients of aforesaid Sections.

6. Criminal law cannot be set in motion merely for asking at the behest of parties like complainant i.e. respondent No.2.

7 It is again required to be observed that the original complainant has already expired.

8. In the light of what has been observed hereinabove, in my opinion, a case for interference is made out.

(5)

9. The order dated 11th November, 2003, passed in Regular Criminal Case No. 128 of 1996 by the learned Judicial Magistrate First Class, Jintur and order dated 31st March, 2005 in Criminal Revision No. 190 of 2003, passed by the learned Sessions Judge, Parbhani, are hereby quashed and set aside. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

Tupe