IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 691 of 2008

* Mustaq Alam s/o Khurshid Aalam,
Age 48 years,
Occupation : Business,
R/o Marathwada Plot, Juna Mondha,
Parbhani. .. **Petitioner.**

Versus

1) The State of Maharashtra,
Through Nanalpeth Police
Station, Parbhani.

2) Mohd. Nasaruddin s/o Mohd.
Qutubuddin Khatib,
Age 75 years,
Occupation: Business,
R/o Kazi Mohalla, Partur,
Taluka Partur, District Jalna. .. **Respondents.**

Shri. Anil H. Kasliwal, Advocate, holding for Mrs. Netrali Gangwal Jain, Advocate, for petitioner.

Shri. S.W. Munde, Additional Public Prosecutor, for respondent No.1.

Shri. R.V. Gore, Advocate, for respondent No.2.

Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.

Date : 24 July 2017

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

1) The petition is filed for quashing of the First Information Report bearing M. Case No.5/2008 registered in Nanalpeth Police Station, Parbhani for offences punishable under sections 406, 420, 464, 465, 467, 468, 471 of the Indian Penal Code. Both the sides are heard.

2) The petitioner is a son of sister of respondent No.2. The respondent No.2 was holding a CL III licence which was granted in the year 1973. In the year 1980 respondent No.2 allowed the petitioner to run the shop as the petitioner was not having any job and as he was relative of respondent No.2. Allegation is made by respondent No.2 in the private complaint which is referred for investigation that behind his back present petitioner, accused, created some false record of applications purportedly given by respondent No.2 to the Excise Department and also produced one person to pose himself as respondent No.2 for giving statement and by using that *modus operandi* he got transferred the licence in his name. It is the contention of the respondent No.2,

complainant that when he realised this mischief of the petitioner, he made representations to the officers and higher authorities of the Excise Department but they did not take any action against the petitioner and the licence is continued in the name of present petitioner, accused.

3) Respondent No.2 challenged the said decision of the Excise Department of transfer of licence in favour of petitioner by filing proceeding before the Commissioner but the said proceeding was dismissed. That decision was challenged by filing a writ petition in this Court in the year 2008 but the petition is dismissed by the High Court as questions of facts were involved in the matter. After that, private complaint came to be filed in the Court of the Judicial Magistrate, First Class on 31-1-2008 by making aforesaid allegations.

4) Learned counsel for the petitioner submitted that proper inquiry was made by the officers and the authorities of the Excise Department and only after that they had given decision that application was given by respondent No.2 and he has also given statement before

the officers. The learned counsel submitted that when the change was made in the year 1981, the Judicial Magistrate ought not to have entertained the complaint in the year 2008.

5) The allegations as they are show that respondent No.2 who was admittedly holding the licence is not admitting his signatures appearing on the applications and the statement. It appears that on two occasions separate applications were made. In the first occasion it was informed that the petitioner was added as partner in the business so prayer was made to add him in the licence as partner. Then this first application was not pressed and another application was given to inform that by way of gift, the respondent had given everything of his shop to the petitioner and then the licence was transferred in the name of the petitioner. There is nothing on record to show that there was any consideration which is ordinarily taken by the licence holder. He did not get anything from the business. This circumstance cannot be ignored. The complainant is asking only to compare his contemporary signatures appearing on some admitted

record with the disputed signature and that can be done through handwriting expert. That can help police to ascertain the truth. Then there will be subjective satisfaction of the investigating agency and it will decide as to whether charge-sheet needs to be filed or report needs to be filed under section 169 of the Code of Criminal Procedure. Thus, there are both possibilities and there are aforesaid circumstances. There is no need to be afraid to the petitioner that he will be arrested as the aforesaid things can be done by giving proper directions.

6) In the result, the petition is dismissed. Rule discharged. Interim relief, if any, stands vacated. However, it is made clear that after receipt of the report of hand writing expert, the investigating agency will give time of 72 hours to the petitioner and before that no coercive action is to be taken against him. For the investigation there is no need to call the petitioner up to that stage.

Sd/- Sd/-
(SUNIL K. KOTWAL, J.) **(T.V. NALAWADE, J.)**

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