

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

CRIMINAL WRIT PETITION NO. 1024 OF 2009

Smt. Rajni Madhukar Saner,
Age 50 years, Occu. Service,
R/o Akshada Apartment,
Adarsha Nagar, Jalgaon,
District Jalgaon

..Petitioner

Versus

1. The State of Maharashtra
2. Eknath Nago Lohar,
Age 60 years, Occu. Retired
r/o Pimpalgaon (Hare),
Taluka Pachora,
District Jalgaon

..Respondent

Ms Surekha Mahajan, Advocate for petitioner
Mr S.M. Ganachari, A.P.P. for respondent no.1
Mr A.J. Patil, Advocate h/f Mr M.S. Deshmukh, Advocate for respondent
no.2

CORAM : N.W. SAMBRE, J.

DATE : 20th January 2017

ORAL JUDGMENT

Leave to amend. Amendment to be carried out forthwith.

2. The respondent no.2 filed complaint being Regular Criminal Case no.180 of 2009, for an offence punishable under Section 420 of the Indian Penal Code alleging that he is member of Shikshak Sanghatana, a registered organisation, which is required to look into the grievances of the teachers. According to him, he received complaints from the employees of the Appasaheb Pundlik Kalu Patil Madhyamik Vidyalaya, Pimparkhed, Taluka Bhadgaon, District Jalgaon of which the present petitioner is the Headmistress and so as to

redress the same, he filed application under Right to Information Act seeking information about the teaching and non-teaching staff, their appointments, the memo issued, explanations tendered, action taken etc. It is the case of the respondent no.2 before the Magistrate that for supplying said information, an amount of Rs.22,845/- was recovered from him towards the photostat charges, postal charges etc. According to him, information, which was rather not demanded, was also supplied and as such, extra amount was extracted from him. He had urged in the complaint same amounts to an offence of cheating under Section 420 of the Indian Penal Code.

3. Learned Judicial magistrate, First Class, Pachora, vide order dated 24th August 2009 directed to investigate the matter in exercise of powers under Section 156 (3) of the Cr.P.C. as such, present petition questioning the legality and tenability of the said proceedings against the petitioner.

4. Learned Counsel for the petitioner submits that perusal of the application under Right to Information Act moved by the present respondent no.2 speaks that he wanted to have all the information of teaching and non-teaching staff of the school in relation to issuance of memo, notices etc, replies given by said employees and the action taken by the Education Department against such employees for a period from 2000 to 2008-09. The said information was sought by the respondent no.2 to be delivered through postal department. After the said application was moved, the respondent-complainant was sent a letter intimating him about the expenses to be incurred towards

photostat charges, postal expenditure and other expenses and accordingly, was intimated to deposit amount of Rs.22,845/-. It is then claimed that against the said communication, he preferred appeal to the Education Officer, which was duly attended to by addressing a communication to the petitioner that the information be made available to the respondent-complainant. On 15th April 2009, details of the amount to be paid by the respondent for receiving information, particularly the number of documents which are supplied, the cost of the photostat, the cost and expenses towards the postage, the packaging and other expenses was intimated to the respondent no.2-complainant. After receipt of the documents, it is claimed that the respondent no.2 lodged protest with the applicant and also with that of the competent authority, i.e. Education Officer raising protest as excess amount was recovered from him by supplying irrelevant documents.

5. According to learned Counsel for the petitioner, if the entire events narrated hereinabove are taken into consideration with its cumulative effect, the cumulative effect was that the information that was sought for was supplied to the complainant and there is no intention or motive on the part of the petitioner. She would then urge that the necessary ingredients so as to form satisfaction for prima facie commission of offence under Section 420 of the Indian Penal Code are not satisfied. She would then urge that the order of learned Magistrate directing investigation under Section 156 (3) of the Cr.P.C. is a non-speaking order, as the learned Magistrate has not at all applied his mind to the requirement of issuance of process for an

offence punishable under Section 420 of the Indian Penal Code as the complaint does not disclose a cognizable offence.

6. Per contra, learned Counsel for respondent no.2 - complainant would urge that order passed under Section 156 (3) of the Cr.P.C. presupposes disclosure of cognizable offence and the option that is only left with the Investigating Officer is to investigate the matter and submit report to the learned Magistrate. According to him, just because an order under Section 156 (3) of the Cr.P.C. is passed, no right is granted in favour of the petitioner to question the same, as the order of the learned Magistrate is not prejudicial to the interest of the present petitioner. He would then urge that the necessary ingredients of Section 420 of Indian Penal Code are very much satisfied as could be gathered from the contents of complaint preferred before the learned Magistrate. According to him, no interference is warranted.

7. Having considered the rival submissions, what is required to be noted is, the complaint case for an offence punishable under Section 420 of the Indian Penal Code is preferred by the respondent no.2-complainant alleging that in 2009, the amount as has been recovered from him towards supplying the information sought by him under Right to Information Act, was on higher and exorbitant side. According to him, the documents which were not called for or rather sought from the petitioner under Right to Information Act were made available and the cost of the same is recovered from the respondent - complainant.

8. What could be gathered from the record is, the amount was received by the petitioner from the complainant towards photostat, postage and packaging charges in accordance with the provisions of the Right to Information Act. The complainant is not disputing about the receipt of the documents under the Right to Information Act but what is disputed is, the amount which is recovered from him for the documents which were never demanded under the Right to Information Act by him.

9. If the application preferred by the respondent-complainant under Right to Information Act is perused, what could be gathered is the information that was claimed by the respondent-complainant was general in nature and not specific. The complainant has sought information of the teaching and non-teaching staff of almost about ten years, particularly in relation to issuance of memo, explanations tendered and the action taken. However, the information that is supplied to the complainant if looked into, the said information is somewhat relevant to the information sought by the respondent-complainant and as such, the information was supplied and received by him.

10. There is one more facet to the claim of the respondent as regards supplying unwarranted and unasked information under the Right to Information Act.

Had it be the case that only few information pursuant to the vague demand made by the respondent-complainant was made

available under the Right to Information Act, the petitioner would have been otherwise also proceeded against for non-supplying the complete information. It appears that the very act of the complainant of seeking the information under Right to Information Act in a vague manner has given rise to the event in question. The perusal of the complaint though discloses that relevant information was supplied, however, a vague statement is made that irrelevant information was also supplied, without specifying such irrelevant information, which according to him is formed to be basis for registration of an offence under Section 420 of the Indian Penal Code.

11. In this background, so far as the very requirement of Section 420 of the Indian Penal Code i.e. cheating and dishonestly inducing delivery of property is concerned, it is required to be noted that (a) there should be fraudulent or dishonest inducement of a person by deceiving him, (b) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property or the person who deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived. What is contemplated is the person so deceived or is likely to be deceived was caused or is likely to cause damage or harm to person qua his body or reputation or property.

12. What could be gathered from the contents of the complaint is, there is no harm caused to the complainant, particularly in the backdrop of requirement of Section 420 of the Indian Penal Code is an

information sought for by him was supplied, which according to him, was not required by him or he has not sought such information. What is required to be noted is, the information in relation to the employees was delivered to him for an appropriate charges which is provided by the petitioner under the Right to Information Act.

13. In the above referred background, in my opinion, the reading of the complaint as was preferred by the respondent-complainant upon giving cumulative effect to the pleadings thereto, the ingredients of Section 420 of the Indian Penal Code are not satisfied.

14. There is one more facet to the matter, while passing order under Section 156 (3) of the Cr.P.C., it was expected of the learned Magistrate to apply his mind to the contents of the complaint, whether it satisfies the ingredients of Section 420 of the Indian Penal Code and then to pass order under Section 156 (3) of Cr.P.C. In the present case, it is to be noted that the learned Magistrate has passed a one line order calling upon the investigation to be carried out pursuant to the contents of the complaint brought before him. In any case, the order passed by the learned Magistrate is non-speaking order or passed without application of mind. The learned Magistrate has even not observed about disclosure of cognisable offence from the contents of the complaint.

15. Having regard to the above fact, in my opinion, it will be appropriate to quash and set aside the complaint dated 24.8.2009 filed by respondent no.2 before the learned Judicial Magistrate, First

Class, Pachora and also to quash the order dated 24.8.2009 passed by Judicial Magistrate, First Class, Pachora in Regular Criminal Case No.180 of 2009.

16. In view thereof, the present Criminal Writ Petition is allowed in terms of prayer clauses (B) and (C-1). Rule made absolute accordingly.

(N.W. SAMBRE, J.)

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