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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1086 OF 2013

Smt. Rajni L. Gandhi & Ors. … Applicants
v/s.
State of Maharashtra … Respondent

Ms. Krupali Rajani for the applicants.
Mr. S. V. Gavand, APP, for the respondent-State.

CORAM : A. K. MENON, J.
DATED : 1ST AUGUST, 2017

P.C. :

1. By this criminal application the applicants seek to quashing of an order dated 12th September, 2013 passed by the Additional Sessions Judge, Thane in Criminal Revision Application no.46 of 2013 and an order dated 2nd November, 2012 passed by JMFC, Thane in C.C.No.582 of 1999. The JMFC rejected an application filed by the applicants for discharge.

2. The application is opposed on behalf of the State by Mr.Gavand, the learned APP, who submitted that the offence has been made out on collection of the security deposit. In view of limited scope of this petition, it is taken up for final disposal by consent of parties. I therefore issue Rule. Rule returnable forthwith. By consent taken up for final disposal.

3. The facts in brief are as follows:-

Applicant nos.1, 2, 5 and 6 are stated to be the trustees of Lok Foundations Trust and members of its Governing Council. The applicant no.3 is the Vice President of Governing Council, applicant no.4 is the member Governing Council and applicant no.7 is the Principal of Lok Puram Public School, Thane, Maharashtra. The applicants are accused of violation of the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act, 1987. The Vartak Nagar Police Station received a complaint from the original complainant Mr. Gopalan Vedantam and others, pursuant to which FIR came to be registered under Section 7 of the said Act against 9 accused persons on 26th November, 1998. Out of these 9 accused, two accused namely Lalitkumar C. Gandhi and Smt. Dhairyabala P. Vora expired on 23rd March, 2010 and 3rd October, 2012. The applicants were granted bail and trial is in progress. Meanwhile the matter was listed for framing of charges and on 4th December, 2010 the applicants moved an application for discharge. After hearing both sides the application was rejected. This led to the filing of revision application.

4. The allegations against the applicants was that the school authorities had enhanced fees without permission of the appropriate authorities and thereby charged capitation fees. This allegation was founded on the basis of a refundable security deposit received by the school. The complainant alleged that the security deposit is nothing but a capitation fee. The complaint came to be filed in view of the fact that parents had also complained of such

amounts being collected. The applicants had challenged the prosecution's version on the basis that no offence under section 7 of the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act, 1987 has been committed.

5. It is the applicants case that a sum of Rs.8000/- was collected from a student who sought admission in the school in the form of refundable security deposit which is certainly not capitation fee. The amount so collected was neither a donation or capitation fee. Receipts were issued to the students/parents wherein there amounts collected was described as non-interest bearing refundable deposit. It would be appropriate to reproduce the contents of one such receipt for ease of reference:-

"RULES FOR REFUND

> *1) The deposit will be paid by the parent/guardian at the time of admission of the child.*
> *2) This deposit is non-interest bearing.*
> *3) This deposit will be refundable at the time the child leaves the institution or after one year from the date of deposit, whichever is later.*
> *4) If the child leaves the institution before completion of one year from the date of deposit, it will be refunded only after completion of one year from the date of deposit.*
> *5) Refund will be allowed only on the production of this receipt in original by the parent/guardian in whose name the receipt is issued."*

Receipt no.278 was issued to the complainant in respect of his child who had been admitted.

6. The applicants counsel Ms. Rajani submitted that the allegations are baseless. No offence whatsoever has been committed under the said Act since amount received was only a deposit and one which was refundable in terms of the deposit receipts. She submitted that the school was a non-religious minority institution and that the provisions of the said Act are not applicable to it. Once such a finding has been reached, it is not open for the respondents to contend that there has been a violation of the said Act. Ms. Rajani relied upon the decision in ***Father Thomas Shingare & Ors. v/s. State of Maharashtra & Ors. 2001 Supp(5) SCR 636.*** In that case it was found that the female child by name Shalmali, was admitted in a school run by a religious minority at Aurangabad. Her father was an Advocate filed a criminal complaint before the Local Magistrate's Court at Aurangabad. The Magistrate took cognizance of the offence and issued process. The accused challenged the order before the Magistrate as well as before the Sessions Court and thereafter before the High Court but unsuccessfully. A Special Leave Petition was filed by the Principal of School along with three other office bearers. It was the contention of the applicants therein that the provisions of the Act do not apply to unaided educational institutions run by the religious minorities and that the impugned order was ultra vires of the Article 38 of the Constitution. It was prayed that the Supreme Court may declare that the provisions of the Act would not apply to unaided minority institutions.

7. After hearing the counsel for the parties, the Court concluded that the State could not impose restrictions under the right to administer educational institutions so long as the institutions are not aided by the State. It was found that this position was reiterated in the case of ***State of Kerala v/s. Very Rev. Mother Provincial etc. (1971) 1 SCR.***

8. Ms. Rajani also relied upon the judgment of the Supreme Court in the case of ***T.M.A. Pai Foundation and Ors. v/s. State of Karnataka & Ors***. In this case also the Supreme Court held that the right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Article 19(1)(g) and 26 and to minorities specifically under Article 30.

9. Ms. Rajani also relied upon the decision of this Court in ***Criminal Writ Petition no.784 of 2001***. This Court observed that the only question which calls for consideration is whether receipt of a development fund can be treated as capitation fees in contravention of the Act. In that case the school had received development fees and issued a stamped receipt and was being prosecuted by the Anti-Corruption Bureau. Subsequently it was found that the Anti-Corruption Bureau had no locus in the matter and therefore the prosecution was taken over by the police and the school was charged with violation of the Act for having accepted the development funds from the guardian of the students.

10. This Court observed, relying upon the judgment of the Supreme Court in Father Thomas Shingare (supra), that no liability can be imposed on the petitioners under the Act for collecting a development fund. It was therefore, submitted on behalf of the petitioners that in the instant case there was no substance in the prosecution was that the petitioners had violated the Act.

11. In the course of submissions it became necessary to consider certain definitions of the Act. Accordingly it is appropriate to reproduce the definitions of "Capitation Fees" as provided under the Act:-

Section 7 of the Act also relevant for our purposes and it reads as under:-

> *"Section 7. Whoever contravenes any provision of this Act, or the rules made thereunder, shall on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to five thousand rupees."*

The aforesaid judicial pronouncements make it clear that the provisions of the Act are not to be applied blindly and without reference to the facts. The receipt issued by the applicant discloses that it is a security deposit and a non-interest bearing refundable deposit one at that. It is not a sum which has been appropriated permanently. It is to be repaid depend upon when the child leaves School or after one year from the date of deposit. If the child leaves the school before completion of one year from the date of deposit, the refund will be made only after the completion of one year from the date of deposit but it is refundable nevertheless.

12. Thus, apart from the fact that the amount will not bear interest for a period of one year the parent or guardian is not permanently deprived of the said sum. The definition of "capitation fees" under Section 2(a) specifically means an amount collected in cash or kind in excess of the prescribed or approved rates of fees regulated under Section 4 which reads as follows:_

> *"4. (1) It shall be competent for the State Government to regulate the tuition fee or any other fee that may be received or collected by any educational institution for admission to, and prosecution of study in any class or standard or course of study of such institution in respect of any or all classes of students.*
>
> *(2) The fees to be regulated under sub-section (1) shall –*
>
> *(a) in case of the aided institution, be such as may be prescribed by a university under the relevant University Law for the time being in force in the State or, as the case may be, by the State Government; and*
>
> *(b) in the case of the un-aided institutions, having regard to the usual expenditure excluding any expenditure on lands and buildings or on any such other item as the State Government may notify, be such as the State Government may approve:*
>
> *Provided that, different fees may be approved under clause (b) in relation to different institutions or different classes or different standards or different courses of studies or different areas."*

13. Section 4 of the Act empowers the State Government to regulate the tuition and other fees that may be collected by any educational institutions.

Section 4(1) provides for regulation of further fees or deposit as security or a amount for any other item, as the State Government may approve. Section 4(2)(a)deals with cases of aided institutions to be regulated, and Section 4(2)(b) deals with the case of unaided institutions having regard to the usual expenditure. The State Government may notify or approve such fees provided that the different fees may be approved under clause (b) for different institutions. Section 4(1) provides for any such other fee or deposit as security or a amount for any other item, as the State Government may approve.

14. Section 7 thus provides for punishment with imprisonment for a term not less than one year but it may extend to three years. What needs to be seen is whether the amount of security deposit to be collected as aforesaid and whether such deposit would amount to a capitation fee. In my view a capitation fee what is quoted in excess of prescribed or approved rate of fees as regulated under Section 4.

15. Section 4 talks of regulation of fees and includes any amount of fee or deposit is security or any other item as the State Government may approve. Therefore the security deposit as contemplated in Section 4(2)(b) cannot amount to a capitation fee since the capitation fee is described to be an amount in excess of the prescribed fee or as the case may be, approved. Furthermore, Section 4 provides that the State Government is competent to regulate the fees of any education institution and the case of unaided

institutions it can be regulated with regard to the aid to the usual extent. Although the deposit in the instant case does not appear to be one that is approved by the state Government, does not appear to have arrived any notification contemplated in the Section. None has been shown to the Court by the respondents.

16 In the facts of the present case, I am of the view that the amount charged as security deposit is certainly not captured in the definition of capitation fees since it is not a amount that is directly collected in excess of prescribed or as approved fees. Being an unaided school, the State Government does not appear to have approved any rate of fees as regulated under section 4 in respect of the applicant. In the case of Vidya K. Rao (supra) this Court has, relying upon the decision of Father Thomas Shingare (supra) quoted the Supreme Court in paragraph 9 as follows:_

> *"9. Thus, what is meant by prescribed rates of fees can only apply to aided educational institutions. So far as unaided schools are concerned the statute conferred an option on the State Government to approve the rates of fees. Such rates need not be uniform as for different institutions. It can as well be different rates for different institutions and also for different classes (or standard) and even for different courses of studies. It could be different rates in different areas also. This means that the State Government should have approved a rate of fees in respect of different standards applicable to Little Flower School before the school authorities."*

17. In respect of unaided schools the Act confers the option on the State Government to approve the rates of fees. Such rates need not be uniform for all institutions, different rates may be approved for different institutions at the different classes and courses. In the instant case no such exercise has been undertaken by the State Government and in my view, the collection of refundable security deposit does not amount to the collection of capitation fees.

18. On behalf of the school and trustees and Government Council/members of Lok Foundation Trust and the Principal of Lok Foundation, Lok Puram Public School who is applicant no.7, an affidavit has been filed for self and on behalf of the applicants affirming that the institution is unaided public school and does not receive any aid from the Government this has not been controverted by the prosecution. The school education department has also supported the affiliation with the school with Central Board of Secondary Education as evident from the letter dated 4th March, 1994 annexed to the said affidavit.

19. In the circumstances, the impugned order recording that the defence that accepting the security was not by way of donation or capitation fee cannot be accepted is not justifiable. Needless to mention the security deposit must be refunded at the end of the period specified failing which the school will invite appropriate action in accordance with law. The applicants are entitled to be discharged in the case.

20. In the circumstances I pass the following order:-

(i) The impugned order dated 2nd November, 2012 is quashed and set aside.

(ii) The applicants are discharged in C.C. No.582 of 1999.

(iii) Application is disposed of accordingly.

(A. K. MENON, J.)

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