

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.40 of 2017
(Bharat s/o. Rajaannaji Tokalwar .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Firdos Mirza, Advocate for the applicant.
Mr.S.S.Doifode, A.P.P. for Non-applicant no.1/State.

CORAM : SMT VASANTI A NAIK &
M. G. GIRATKAR, JJ.

DATE : 12.9.2017.

By this Criminal Application, the applicant seeks the quashing and setting aside of the First Information Report bearing No.3 of 2017 registered against the applicant for the offences punishable under Sections 420, 406, 469 and 120-B of the Penal Code.

A report was lodged by the non-applicant no.2/Vishal s/o. Arun Mate on 3.1.2017 against the applicant alleging therein that he and his friend Nikhil Fale had taken admission in the Kusumtai Vocational Training Centre for a Course from 2010-12 and they had received a sum of Rs.2,070/- in their Bank Accounts. It is alleged in the report that the Scholarship amount was however received by the applicant for admission in the Vivekanand College, Nagpur. It is further alleged that complainant Vishal and his friend Nikhil had never studied in the said College and they were not aware about Rashtrabhasha Prachar Samiti. It is alleged in the complaint that out of the

Scholarship amount, the amount of maintenance fee of Rs.2,070/- was only deposited in the Bank Accounts of complainant Vishal and his friend and an amount of Rs.70,000/- towards tuition fees was directly deposited in the account of the College of the applicant. It is alleged that the applicant has misled the students with an assurance that they are taking admission in Kusumtai Vocational Training Centre, admission forms were secured from them from the other College. It is further alleged that the applicant has committed misappropriation and fraud by making such admissions and has induced the innocent students to take admission in Kusumtai Vocational Training Centre and had got the forms filled in from them through the Vivekananda College, Nagpur which is affiliated to Rashtrabhasha Prachar Samiti Gyan Mandal.

It is stated on behalf of the applicant that the F.I.R. is liable to be quashed and set aside as, on the basis of the material that is annexed by the applicant to the Criminal Application, it could be gathered that the allegations made in the report lodged by the complainant are not true. It is stated that by an interim order passed by this Court in Writ Petition No.1209 of 2016, dt.18.2.2016, the State Government was directed to conduct an enquiry into the affairs of the institutions only through the Officers of the Social Welfare department or the Tribal Welfare department. It is stated that, in view of the said order, the non-applicant no.1 was prevented from registering the F.I.R. against the applicant.

On the other hand, the learned Additional Public Prosecutor has stated by relying on the affidavit-in-reply

filed on behalf of the non-applicants that the applicant has committed misappropriation and fraud to the tune of Rs.17,47,875/- and has induced the innocent students for taking admission to the Kusumtai Vocational Training Centre and has filled up their forms through the Vivekanda College affiliated to Rashtrabhasha Prachar Samiti Gyan Mandal for conducting one year course. It is stated that an amount of Rs.2070/- is shown to have been deposited in the accounts of Vishal Mate and Nikhil Fale and the amount of Rs.31,900/- (for Vishal Mate) and Rs.19,900/- (for Nikhil Fale) are deposited in Vivekanand College account, though they had not taken any admission as alleged by the applicant.

It is submitted that the applicant is involved in Scholarship and even the documents are fabricated and signatures of Nikhil Fale, Vishal Mate and some of the other students that were admitted to the course on misrepresentation have been forged. It is stated that online forms of the complainant and other students with fake and forged documents were tendered and the applicant has obtained the amount of Scholarship and tuition fees amounting to more than Rs. Seventeen Lakhs. It is stated that the Income Certificate of the parents are also forged. It is stated that some of the Aadhar Cards are also forged. It is stated that the photographs that are different from the photographs on the Aadhar cards are affixed. It is stated that it is discovered after recording the statements of several students that the Income Certificates are fraudulently executed in the names of their father even after death of their father. The statements of four such students that the

Death certificates of their father and the Income certificates which are secured after the death of their father are annexed to the affidavit-in-reply at Annexure-XIII. The learned Additional Public Prosecutor has relied on voluminous documents to submit that this Court may not exercise the jurisdiction under Section 482 of the Code of Criminal Procedure to quash the F.I.R. and the proceedings against the applicants.

On a perusal of the documents annexed to the Criminal Application as also the affidavit-in-reply filed on behalf of the non-applicant no.1, it appears that a case is not made out by the applicant for quashing and setting aside the F.I.R. registered against him. The documents on which the applicant has relied cannot be considered by this Court in exercise of the jurisdiction under Section 482 of the Code of Criminal Procedure to hold that the offences cannot be made out against the applicant. It cannot be said on a reading of the allegations in the F.I.R. and the material collected by the respondent no.1 that the offences punishable under Sections 420, 406, 469 and 120-B of the Indian Penal Code cannot be prima facie made out against the applicant. We prima facie find that the respondent no.1 has found voluminous material in support of the allegations in the first information report. We do not find anything in the order passed by this Court on 18th February, 2016 in Writ Petition No.1209 of 2016 that prevents the non-applicant no.1 from registering the F.I.R. against the applicant. The reliance placed by the learned Counsel for the applicant on the said order to submit that the F.I.R. was wrongly registered is liable to be rejected.

Since the F.I.R. registered against the applicant cannot be quashed in the circumstances of the case, we dismiss the Criminal Application. Order accordingly.

JUDGE

JUDGE

**jaiswal*