

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 5318 OF 2016

Aarif Khan S/o Ilyas Khan,
Age: 39 years, Occ: Asst. Teacher,
R/o: Quadri Nagar, Near Tahzib Urgu
High School, Chalisgaon, Dist. Jalgaon.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through Chalisgaon City Police Station.

2. Khan Abdul Karim S/o Gulab Hussain Khan,
Age: 54 years, Occu: Head Master,
Anglo Urdu High School,
R/o. Islampura, Choti Gujri, Chalisgaon.

... **RESPONDENTS**

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Mrs. A. N. Ansari, Advocate for Applicant.
Mr. M. M. Nerlikar, APP for Respondent No.1 / State.
Mr. K. P. Chaware, Advocate for Respondent No.2.

...

WITH

CRIMINAL APPLICATION NO. 1278 OF 2017

Tanvir Shaikh Badroddin,
Age: 40 years, Occ: Reporter,
R/o. : Barbhai Mohalla, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai-32.
2. Police Inspector,
Chalisgaon City Police Station,
Tq. Chalisgaon, Dist. Jalgaon.
3. Khan Abdul Karim S/o Gulab Hussain Khan,
Age: 42 years, Occu: Service,
R/o. Anglo Urdu High School,
Chalisgaon, Tq. Chalisgaon,
District: Jalgaon.

... **RESPONDENTS**

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Mr. A. N. Nagargoje, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent Nos.1 and 2.

Mr. K. P. Chaware, Advocate for Respondent No.3.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 17th October, 2018.

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

. Both the proceedings are filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.44 of 2016, registered with Chalisgaon City Police Station, Taluka Chalisgaon, District Jalgaon, for the offences punishable under Sections 379 and 383 read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 During arguments, some messages circulated on WhatsApp, were produced in support of the allegations made in the FIR.

4 The FIR is given by one Khan Abdul Karim, who is Headmaster of one school from Chalisgaon. Applicant from first proceeding, Aarif Khan is working as a teacher in this school. Allegation is made that Applicant from second proceeding is a friend of Aarif Khan and he is also involved in the offence. Allegations are made that on 21st January, 2016, the register maintained of attendance in respect of teaching staff appointed in leave vacancy was stolen by somebody. Allegations are made that the first informant then realized that Aarif Khan was taking photographs of muster roll by using his mobile and that was noticed by clerk of the school and another teacher Zakir Khan on 25th February, 2016.

5 Allegations are made that on 5th March, 2016, on mobile WhatsApp No.9860468807, there were photocopies of the pages of

aforesaid stolen register and of regular muster. It is contended that by publishing some material on WhatsApp, the present Applicants have defamed the institution. It is contended that as the photocopy of the stolen register was also circulated on WhatsApp, inference is possible that Aarif Khan committed theft of that register. It is contended that request was made to both the Applicants to return the register, but they have not returned it and probably they want to extract the money. FIR was given on 24th March, 2016.

6 Photocopies of the messages circulated on WhatsApp show that the pages of attendance dated 7th August, 2015, 8th August, 2015 and 11th August, 2015 were placed. There was a matter like the school was making money by indulging into illegal activity and even the Government was deceived. Thus, the matter was published already on 24th February, 2016 as per the allegations. Now photocopy of the matter published on 5th March, 2016 is also produced containing the aforesaid matter, which was intended to expose the irregularities in the school. FIR came to be given on 24th March, 2016. There is no explanation as to why FIR was not given immediately. Further, when the matter was already published, it does

not look probable that there was intention to extort some money. If one teacher was in a position to take photographs of the muster, then there was no need for him to take the register with him.

7 The submissions made by the learned counsel for first informant show that many irregularities were noticed in the functioning of the school and no register could be produced before the authority by the school. The learned counsel submitted that the Management was responsible for that irregularity. This Court asked as to whether the present Applicants are on the side of Management and to that, there was no reply from the counsel. In view of the nature of allegations, it cannot be said that the Applicants are taking side of the Management. On the contrary, they want to expose the illegal acts of the Management. The crime is registered only for the offences punishable under Sections 379 and 383 read with 34 of the Indian Penal Code. In view of the aforesaid circumstances, it can be said that only to pressurize the teacher, who is working as a whistle blower, the report is given. In the result, the following order is passed:

ORDER

- I. Both the applications are allowed.

- II. Relief is granted in two the applications in terms of prayer clause (B) and (A) respectively.
- III. Rule is made absolute in those terms.

ndm

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]