

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 420 OF 2015

1. Shivaji s/o Ashok Suryawanshi
(Tuljapure), Age : 40 Years,
Occu. Business.
2. Sow. Meena Ashok Suryawanshi
(Tuljapure), Age : 55 Years,
Occupation - Household and
Business.
3. Ashok Harishchandra Suryawanshi
(Tuljapure), Age : 59 Years,
Occupation - Business and
Agril.

Above all R/o Meenakshi Nagar,
Hatte Nagar, Road No. 1,
Deshpande Galli, Latur,
Tq. And District Latur.

....Petitioners.

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department
Mantralaya, Mumbai - 400032.
2. Police Inspector,
Shivajinagar Police Station,
Latur, Tq. And Dist. Latur.
3. Balaji s/o Rambhau Salunke,
Age : 50 Yrs, occu. Business,
R/o Khadgaon Road,
Sambhaji Nagar, Latur,
Tq. And Dist. Latur.

...Respondents.

Mr. N.P. Patil Jamalpurkar, Advocate for Petitioners.

Mr. S.J. Salgare, APP for Respondent Nos.1 and 2.

Mr. T. M. Venjane, Advocate for Respondent No.3.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.**
DATED : 01/11/2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed for relief of quashing of F.I.R. No. 37/2015 dated 20.3.2015 registered with Shivaji Nagar Police Station, Latur for the offences punishable under sections 420, 468, 471, 406, 34 etc. of Indian Penal Code. Both the sides are heard.

2) The crime is registered on the basis of report given by respondent No. 2. Petitioner No. 3 Ashok is husband of petitioner no. 2. Petitioner No. 2 Meena is sister of first informant and petitioner no. 1 is son of petitioner Nos. 2 and 3.

3) It is the case of first informant that in the year 1988 he had obtained semi wholesale licence in respect of kerosene. He had taken help of petitioner No. 2 and her son, petitioner No. 1 for conducting the business of selling kerosene in semi wholesale. It is contended that to grab the business of the first informant the petitioners have got transferred the semi wholesale licence in the name of petitioner No. 1 by creating some false record. It is contended that first time in the year 2014 in one proceeding which was filed in this Court, the first informant came to know that such

record was created by the present petitioners. It is contended that he also came to know that one suit was filed behind his back bearing No. 691/1998 and behind his back, compromise decree was obtained by the petitioners in the said suit and that record was also used for getting licence which was issued to petitioner. It is contended that petitioners had not appointed Advocate Shri. Bedade, who had filed appearance in the suit and every record was false and Court was also deceived. It is contended that when he questioned petitioner on 29.9.2014 about the change made in semi wholesale licence, they gave threat of life to him and so, he was required to approach police.

4) The submissions made and the record show that in the past, business of semi wholesale of kerosene was conducted by the first informant and petitioner No. 1 - Shivaji in partnership. The first informant also admits that he had taken help of his sister and petitioner No. 1 in that business. Copy of document of dissolution of partnership is produced on record and it shows that the partnership between first informant and Shivaji came to be dissolved on 2.12.1997. This document shows that the first informant had retired from the partnership business on 1.12.1997 and the partnership was dissolved from 1.12.1997. Shivaji was allowed to do, to continue the business in the same name and they had admitted that there was no dispute over the accounts of partnership business. Copy of

compromise decree of suit No. 401/1998 shows that the suit was filed by Shivaji for relief of declaration that aforesaid business was owned by him and first informant had no concern with the business. The suit was filed on 26.11.1998. The compromise decree was prepared on 19.12.1998 and the first informant gave consent to give the decree of declaration in favour of Shivaji. Copy of document of settlement is also produced on the record. It needs to be presumed that the Trial Court verified the things and only after that the decree in terms of settlement was given by the Court. Thus, after dissolution of the partnership, the decree of aforesaid nature was given in favour of Shivaji.

5) It is not disputed that when the business was being done in partnership, there were names of both first informant and Shivaji on the licence. The report submitted by the learned APP shows that on 18.5.1999 the name of first informant was deleted from the licence and the name of only Shivaji remained on the licence.

6) Copy of order made by Hon'ble Minister for State of Maharashtra dated 1.1.2003 is produced on record and this order shows that first informant had submitted in that proceeding that he had given up his share in the partnership business and he had no source of income and so, it was necessary to give him the licence for

selling kerosene in retail and for that previous licence given to him of retailer can be revived. This submission was accepted and the licence to sell the kerosene in retail was issued by the Government in his favour.

7) There is copy of order made in Writ Petition No. 4757/2014 which was filed by first informant. The petition came to be dismissed for want of prosecution. This petition was filed by the first informant for giving direction to add the name of first informant in semi wholesale licence which was deleted by the authority in the year 1999. Thus, the petition filed for similar relief is already dismissed by this Court.

8) The aforesaid circumstances show that there is decision of Civil Court in favour of petitioners. The first informant failed to get relief in respect of the change made in semi wholesale licence from this Court. If it is his case that he is deceived and fraud is played on Court in getting the aforesaid reliefs, he needs to take proper steps in that regard. On the basis of aforesaid circumstances, it cannot be said that present petitioners created false record to get the name of first informant deleted from the licence. Though there can be circumstance like obtaining some record of date of birth in favour of Shivaji to enable him to get the licence and for that he was shown as

major, that circumstance has not affected the rights of the first informant. That circumstance cannot be considered for taking decision on the allegations made by the first informant. In view of these circumstances, this Court holds that it is not desirable to ask the petitioners to face the trial for aforesaid offences. In the result, following order is made.

O R D E R

Petition is allowed. Relief is granted in terms of prayer clause 'B'. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/