

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

CRIMINAL WRIT PETITION NO. 521 OF 2017
WITH CA/244/2018 IN WP 521/2017.

Dr. Nilesh Vinayak Marathe,
Age 34 years, Occ. Medical
Practitioner, R/o. Vivekanand ... **Petitioner.**
Nagar, Bhadgaon Road, Pachora
Tq. Pachora, Dist. Jalgaon.

VERSUS.

1 The State of Maharashtra.

2 Vishnu Mahadu Sonar, Age 55
years, Occ. Agril. & Business,
R/o. Gandhi Chowk, Pachora, Tq. ... **Respondents.**
Pachora, Dist. Jalgaon.

...

Learned Senior Counsel for Petitioner : Mr. V.D. Hon,
h/f Mr. A.V. Hon.

APP for Respondent No. 1 : Mr. G.O. Wattamwar.

Advocate for respondent No. 2 : Mr. Rajendra Dayma.

CORAM : K. L. WADANE, J.

Reserved on : 01st March, 2018.

Pronounced on : 08th March, 2018.

JUDGMENT

1. Rule. Rule made returnable forthwith. By consent of the learned counsel for both parties, this petition heard finally.

2. The present petition is filed by the petitioner being aggrieved with the order passed by the learned Additional Sessions Judge, Jalgaon, in Criminal

Revision Application No. 289/2013, dated 13.12.2016, by which the revision application of the present petitioner is rejected and the order passed by the Judicial Magistrate, First Class, Pachora in Reg. Criminal Case No.57/2011 dated 23.10.2013 is confirmed.

3. Petitioner is a medical practitioner. The respondent No. 2 filed a private complaint in which directions were issued under section 156(3) of the Code of Criminal Procedure. The investigation was conducted and charge-sheet has been filed for the offences punishable under section 409, 406, 420, 467, 468 read with section 34 of the Indian Penal Code. The petitioner preferred an application for discharge before the trial court which is also dismissed.

4. The petitioner is happened to be the son of Ex-Municipal councilor and it is alleged that Municipal Council is having its commercial complex at Pachora, known as 'Supdu Bhadu Patil Shopping Complex'. The Municipal Council lent Gala No. 104, 105, 108 and 109 to Shri. Agrasen Urban Co-Operative Credit Society, Pachora (hereinafter referred as 'the Society') on rent basis, on certain terms and conditions. It is further alleged by the prosecution that taxes of said Galas were remained due. As a result of which Pachora

Municipal Council had sealed all the four Galas. It is further alleged that the Society had gone in liquidation and a liquidator is appointed on it.

5. It is further alleged that accused No. 2 Sunil Mor in the capacity of Chairman of the Society had unauthorizedly given no objection certificate of said Galas by preparing forged documents.

6. I have heard the arguments of Mr. Hon, learned senior counsel for petitioner, Mr. Wattamwar, learned APP for respondent No. 1 and Mr. Dayma, learned counsel for respondent No. 2.

7. Mr. Hon, learned senior counsel for petitioner argued that petitioner is a doctor by profession and he obtained four Galas No. 104, 105, 108 and 109 in the Municipal Council complex Pachora, after following due process of law. He deposited the rent/fess levelled by the Municipal Council for the allotment of the aforesaid Galas. Mr. Hon, learned senior counsel, further argued that basically the above said Galas are belonging to the Municipal Council Pachora. Initially, those Galas were lent to the Society on rent basis. The Society failed to abide the terms and conditions of the contract took place between it and the Municipal Council and after resolution of the Municipal Council,

the Galas were allotted/transferred to the petitioner.

8. Mr. Hon, learned senior counsel for petitioner further points out that father of the petition and the original complainant i.e. respondent No. 2 were the councilors of the Municipal Council, Pachora. The father of the petitioner filed a complaint before the District Magistrate, Jalgaon. On the basis of the complaint filed by the father of the petitioner, the respondent No. 2, who was councilor of the said Municipal Council was disqualified on the ground that he has not followed the whip. Mr. Hon, learned senior counsel for petitioner has produced on record the copy of the order passed by the District Magistrate, Jalgaon, dated 02.04.2011, which is taken on record.

9. Mr. Hon, learned senior counsel, by referring the above documents submitted that there is political rivalry between the petitioner, his father and the original complainant/respondent No. 2. So the present complaint is out-come of the political rivalry. Mr. Hon, learned senior counsel, further argued that the allegations against the petitioner are that he along with accused No. 2 Sunil Mor in furtherance of their common intention have forged certain documents particularly no-objection certificate issued by accused

No. 2 Sunil Mor, dated 03.11.2009, and they succeeded in getting allotment of the aforesaid Galas. It is further alleged that accused No. 2 Sunil Mor was not the Chairman of the Society. Already the liquidator was appointed and inspite of the knowledge of the same, the accused No. 2 Sunil Mor has given a false no-objection certificate addressed to the Municipal Council, Pachora. It is further alleged that the order of allotment was made on 12.11.2009, however, before that, the Municipal Council executed an agreement in favour of the petitioner, so also, petitioner has deposited the fees/rent with the Municipal Council prior to the order of the allotment letter. Therefore, according to complainant/respondent No. 2, all these documents were fabricated by the petitioner and accused No. 2 in order to get the possession of the aforesaid four Galas.

10. Learned counsel for respondent No. 2 has argued that the respondent No. 2/original complainant was Ex-President of the Municipal Council Pachora and in the capacity of a citizen he has a right to file complaint against accused persons, who had taken dis-advantage on the basis of the forged documents.

11. Learned counsel for respondent No. 2 relied

upon the observations in case reported in 1984 DGLS (SC) 41 (A.R. Antulay Vs. Ramdas Nayak) and 2012 DGLS (SC) 67 (Subramanian Swamy V/s. Manmohan Singh and another). Both cases were related to the charges of corruption. In which it is held that there is no provision in the Code of Criminal Procedure which bars a citizen from filing a complaint against a public servant who alleged to have committed the offence.

12. In the present case the petitioner is not a public servant. However, that is not an important question to be determined here. What is to be considered is that whether there are sufficient grounds against the petitioner to frame charge and to proceed with the trial. It is material to mention that petitioner is charged for the offences punishable under sections 406, 409, 419, 420, 467, 468, read with section 34 of the Indian Penal Code.

13. During the course of arguments it was not clarified on behalf of the respondents that which documents the petitioner has forged. The entire arguments were concentrated on the aspect of the fabrication of the documents and on the basis of which the petitioner is succeeded in getting the four Galas. Considering the material aspect, it appears that the

prosecution has alleged that the petitioner and accused No. 2 Sunil Mor have given no-objection certificate dated 03.11.2009. The copy of the same is available in the papers of investigation, from the same it appears that accused No. 2 showing to be a chairman of the Society addressed a letter to the Chief Officer, Municipal Council, Pachora in reference to the transfer of the Galas No. 104, 105, 108 and 109. In reference to the above subject it was communicated to the Chief Officer of Municipal Council Pachora that the Chairman has no objection to transfer the aforesaid Galas. On bare perusal of the aforesaid document it appears that the petitioner has not signed the document, nor he is a party to that document, nor this document either signed by the petitioner or it was communicated to the petitioner. If at all this document is said to be a fabricated document, then prima-facie the accused No. 2 is responsible for the same.

14. I have carefully gone through the statement of witnesses. From the statement of witnesses it appears that the Municipal Council Pachora was not informed by the Society that a Liquidator was appointed long back. Further it reveals from the statement of one Girish Patil that the Society has executed an agreement in

his favour on 16.11.2002 and possession of the Galas were handed over. But subsequently the rent amount to the extent of Rs. 2,25,000/- were due, therefore, the Municipal Council has taken possession of the aforesaid Galas and transferred the same to the petitioner. On perusal of his statement dated 24.04.2011 it appears that he has stated in his statement before the police that rent amount to the extent of Rs. 2,25,000/- was due therefore the Municipal Council has sealed the aforesaid Galas and subsequently the Municipal Council had taken the possession of the aforesaid Galas and thereafter for completion of the process this witness and Municipal Council obtained a no objection certificate from accused No. 2 Sunil Shankarrao Mor. Marathi version of that particular sentence reads as follows :

“मी व नगरपालिकेने हस्तांतरण प्रक्रिया पूर्ण करण्यासाठी सुनिल शंकरलाल मोर यांचेकडून नाहरकत दाखला घेतला होता”

So on plain reading of the statement of the aforesaid witness it appears that this witness and Municipal Council had obtained no objection certificate from another accused Mr. Mor. Therefore, there is no remote reference in the statement of any witness that the petitioner has forged any documents regarding no

objection certificate. On the contrary it appears from the record that the Municipal Council has after passing resolution and after accepting the rent/fees has allotted the aforesaid Galas.

15. Learned counsel for respondent No. 2 argued that the allotment letter was issued to the petitioner on 12.11.2009. However, entire process of allotment of the Galas was completed between petitioner and Municipal Council on 03.11.2009. On perusal of the papers of investigation it appears that the Municipal Council has executed an agreement of rent in favour of petitioner on 03.11.2009. The fees was accepted on the same day. Therefore, it appears that, the entire process was completed on 03.11.2009. However, the allotment letter was issued subsequently on 12.11.2009. At the most that can be treated as a procedural lapse on the part of the parties to the contract i.e. petitioner and the Municipal Council. However, that does not mean that the petitioner has fabricated or forged certain documents.

16. On perusal of the reasons recorded by the learned Magistrate it appears that the Magistrate has observed that there is nothing on record at the stage to hold that the charge against both the accused will

be groundless. Similarly, learned Sessions Judge has observed in its order that accused No. 2, who was the then Chairman, issued letter dated 03.10.2009 to the Chief Officer, Municipal Council, Pachora for making transfer of the Galas to the concerned Society. In fact, prior to it, the society was already seized under liquidation, thereby it ought to have been issued with the consent of the Liquidator. Even the reasons and observations of the Sessions Judge appears to be against the accused No. 2 Sunil Mor.

17. So after scrutiny of the entire record, there is no evidence to show that the petitioner had fabricated or forged any document in reference to the no objection certificate issued by the then Chairman of the Society i.e. accused No. 2 Sunil Mor.

18. In such circumstances, following order is passed.

O R D E R

- i) Writ Petition is allowed.
- ii) Order passed by Judicial Magistrate First Class below Exh. 33 in Regular Criminal Case No. 57/2011 and the order passed by the Additional Sessions Judge in Criminal Revision Application

No. 289/2013 on 13.12.2016 are set aside and the petitioner stands discharged.

19. Rule is made absolute in the above terms. Writ Petition is accordingly disposed of. No costs.

20. Criminal Application No.244/2018 stands disposed of.

(K. L. WADANE, J.)

mkd