

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 662 OF 2014

- 1] Vijay Gulabrao Patil,
Age : 52 years, Occu. : Agri.
- 2] Sahebrao Nimba Patil,
Age : 55 years, Occu. : Agri.,
- 3] Sau. Chitrabai Vijay Patil,
Age : 45 years,
Occu. : Household,
- 4] Sau. Mandakini Rajendra Patil,
Age : 36 years, Occu. Household,
- 5] Rajendra Gulabrao Patil,
Age : 51 years, Occu. Service,
- 6] Vishwas Dholu Suryawanshi,
Age : 64 years, Occu. : Agri.,
- 7] Avchit Girdhar More,
Age : 70 years, Ocu. : Agri.,
- 8] Shivaji Manga Patil,
Age : 72 years, Occu. : Agri.,
- 9] Rushikesh Vijay Patil,
Age : 22 years, Occu. : Service,
- 10] Vilas Kashinath Patil,
Age : 54 years, Occu. : Agri,
- 11] Gangaram Baliram Patil,
Age : 72 years, Occu. : Agri.,
- 12] Gulab Barku Patil,
Age : 65 years, Occu. : Agri.,
- 13] Idarchand Damu Sonwane,
Age : 45 years, Occu. : Service,
- 14] Dhanraj Bhaurao Bhil,

Age : 65 years, Occu. : Agri.,
15] Vasant Bhatu Baisane,
Age : 65 years, Occu. : Retired,
16] Ajay Shivaji Patil,
Age : 50 years, Occu. : Service,
17] Sau. Ushabai Narayan Patil,
Age : 60 years, Occu. : Household,
All R/o Mohadi (Pra. Dangari),
Tq. & Dist. Dhule. ...Petitioners

Versus

1] The State of Maharashtra,

2] The Investigating Officer,
Songir Police Station, Dhule,
Tq. & Dist. Dhule.

3] Tukaram Namdeo Patil,
Age : 64 years, Occu. : Agri.,
R/o Mohadi (Pra. Dangari),
Tq. & Dist. Dhule ...Respondents

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Mr. R. N. Dhorde Sr. Counsel I/b Mr. V. R. Dhorde,
Advocate for Petitioners.

Mr. R. V. Dasalkar, A. P. P. for Respondent Nos. 1 & 2.

Mr. S. P. Shah, Advocate for Respondent No. 3.

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**WITH
CRIMINAL WRIT PETITION NO. 558 OF 2014**

1] Vijay Gulabrao Patil,
Age : 52 years, Occu. : Agri.

- 2] Sahebrao Nimba Patil,
Age : 55 years, Occu. : Agri.,
- 3] Sau. Chitrabai Vijay Patil,
Age : 45 years,
Occu. : Household,
- 4] Sau. Mandakini Rajendra Patil,
Age : 36 years, Occu. Household,
- 5] Rajendra Gulabrao Patil,
Age : 47 years, Occu. Service,
- 6] Shivaji Manga Patil,
Age : 72 years, Occu. : Agri.,
- 7] Avchit Girdhar More,
Age : 70 years, Occu. : Agri.,
- 8] Gangaram Baliram Patil,
Age : 72 years, Occu. : Agri.,
- 9] Gulabrao Barku Patil,
Age : 65 years, Occu. : Agri.,
- 10] Rushikesh Vijay Patil,
Age : 22 years, Occu. : Service,
- 11] Pravin Shivaji Patil,
Age : 45 years, Occu. : Service,
- 12] Nachiketh Rajendra Patil,
Age : 18 years, Occu. : Nil,
- 13] Sharad Fakira Patil,
Age : 48 years, Occu. : Agri.,
- 14] Vilas Kashinath Patil,
Age : 54 years, Occu. : Agri.,
- 15] Suresh Suklal Dhangar,
Age : 38 years, Occu. : Agri.,
- 16] Dhanraj Bhaurao Bhil,
Age : 65 years, Occu. : Agri.,
- 17] Idarchand Damu Sonwane,

Age : 45 years, Occu. : Service,
18] Vasant Bhatu Baisane,
Age : 65 years, Occu. : Retired,
19] Ajay Shivaji Patil,
Age : 50 years, Occu. : Service,
20] Punju Onkar Patil,
Age : 58 years, Occu. : Agri.,
21] Sau. Alkabai Ajay Patil,
Age : 48 years, Occu. : Household,
22] Vilas Devaji Patil,
Age : 38 years, Occu. : Agri.,
23] Bhikan Fakira Patil,
Age : 55 years, Occu. : Agri.,
24] Shashikant Vijay Patil,
Age : 25 years, Occu. : Business,
25] Shailendra Dashrath Patil,
Age : 40 years, Occu. : Agri.,
All R/o Mohadi (Pra. Dangari),
Tq. & Dist. Dhule. ...Petitioners

Versus

1] The State of Maharashtra,

2] The Investigating Officer,
Songir Police Station, Dhule,
Tq. & Dist. Dhule.

3] Vijas Hukumchand Gujar,
Age : 48 years, Occu. : Agri.,
R/o Mohadi (Pra. Dangari),
Tq. & Dist. Dhule. ...Respondents

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Mr. R. N. Dhorde Sr. Counsel I/b Mr. V. R. Dhorde,
Advocate for Petitioners.

Mr. R. V. Dasalkar, A. P. P. for Respondent Nos. 1 & 2.

Mr. D. B. Thoke, Advocate for Respondent No. 3.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 25-10-2018.

COMMON JUDGMENT : (Per Smt. Vibha Kankanwadi, J)

01. Both these petitions have been filed invoking the powers of this Court under articles 14 and 226 of Constitution of India as well as for invoking inherent powers of this Court under Section 482 of Cr. P. C. Criminal Writ Petition No. 662 of 2014 has been filed for quashing and setting aside the order dated 22.4.2014 passed by 9th J. M. F. C., Dhule, Dist. Dhule in Criminal Misc. Application No. 362 of 2014 under Section 156(3) of the Code of Criminal Procedure and the F. I. R. based on that order, bearing C. R. No. 36 of 2014 registered with Songir Police Station, Dhule on 30.4.2014. Writ Petition No. 558 of 2014 has been filed to challenge the order dated 17.4.2014 passed by learned 4th J. M. F. C., Dhule, Dist. Dhule in Criminal Misc. Application No. 274 of 2014

under Section 156(3) of the Code of Criminal Procedure and the F. I. R. bearing C. R. No. 31 of 2014 registered with Songir Police Station. The dispute between parties and points raised by them are same in both the cases, hence, proposed to be disposed by this common judgment.

02. Rule. Rule made returnable forthwith. By consent, heard finally.

03. Petitioners contend that one educational institution/ trust by name Shikshan Prasarak Mandal, Mohadi was established on 8.6.1961. The said institution runs various schools, junior college at Mohadi. Elections were held between 1996 to 2001 and change report No. 132 of 1996 was accepted. However, the change report No. 155 of 1996 filed by respondent No. 3 came to be rejected. The order of the Assistant Charity Commissioner was challenged before Joint Charity Commissioner by the group of respondent No. 3 and appeal came to be dismissed. It was further challenged before District Court and that application also came to be dismissed. As per the change report which was accepted, the applicant No. 1 is the elected President. The elections for the term 2001 to 2006 were held on 8.4.2001 and the change report No. 264 of 2001 came to be filed. The said elections were held as per the old constitution. That change report was also

allowed by the Assistant Charity Commissioner, Dhule on 4.12.2002. Vijay Gujar and others challenged the said Order in Appeal No. 4 of 2003. The said appeal came to be dismissed by Joint Charity Commissioner on 12.9.2003. The Civil Misc. Application No. 97 of 2003 was preferred by the said group before District Court, Dhule and the said application also came to be dismissed on 12.10.2009. Thus, the change report No. 264 of 2001 was also approved. The Managing Committee which came in power after the said election prepared new constitution and therefore, held a general body meeting. Accordingly, agenda dated 27.4.2001 was issued to all the members. In the general body meeting out of 446 members, about 125 members were present. The resolution was passed to adopt new constitution. According to the new constitution, the earlier members were required to make fresh application for membership within a period of 3 months from 12.8.2001. Thereafter, again general body meeting was called on 16.9.2001 by taking a decision on 31.8.2001. The agenda was issued and at that time 114 members were present. Subject Nos. 2 and 3 were confirmed in the said meeting. After payment of enhanced membership fees, the members were admitted to the institution. However, those who had not paid the membership fees lost their right to become

the member of the trust. After the new constitution, change report No. 483 of 2001 was allowed by the Assistant Charity Commissioner, Dhule on 7.2.2006. The said order was challenged by respondent No. 3 by filing Appeal No. 40 of 2006. The issue of amended constitution was considered by the learned Joint Charity Commissioner, Aurangabad and by order dated 4.7.2007 the appeal was allowed rejecting the change report. The present applicant No. 1 and one Rajendra Gulabrao Patil preferred Misc. Civil Application No. 50 of 2007 challenging the order of learned Joint Charity Commissioner, Aurangabad to District Court Dhule in Misc. Civil Application No. 50 of 2007. The learned District Judge-2, Dhule rejected the said application. Second appeal was preferred to this Court bearing No. 757 of 2005. It came to be allowed on 2.2.2010 observing that Assistant Charity Commissioner had no power to decide the amendment of the constitution under Section 22 of the Bombay Public Trust Act. Therefore, orders passed by the Assistant Charity Commissioner as well as Joint Charity Commissioner and the District Court were held to be improper and it was directed that they should approach the appropriate forum. Some petitioners approached Assistant Charity Commissioner under Section 50A of the Maharashtra Public Trust Act, 1958 and therefore, the said issue

regarding amendment of constitution is pending before the said forum. In the meantime, elections were held in 2006 by the earlier managing committee. Respondent No. 3 had filed nomination form for contesting the elections. He got elected. Change Report No. 596 of 2006 was filed before learned Assistant Charity Commissioner. However, from managing committee change report No. 810 of 2006 was filed. Both the change reports were decided on 20.9.2013 by allowing the same. Respondent No. 3 had not raised any objection to the change reports and from 3.7.2006 till 20.9.2013. One Vijay Hukumchand Gujar filed two appeals before Joint Charity Commissioner bearing Appeal No. 19 of 2013 and 20 of 2013 challenging both the change reports. The interim relief was granted. When the interim relief was granted, it was challenged before this Court in Writ Petition No. 896 of 2014. The Writ Petition was dismissed. Without disclosing the said fact, said Vijay Gujar filed 2 separate Writ Petition Nos. 2337 of 2014 and 2338 of 2014 challenging the orders dated 20.9.2013 regarding interim relief. Both the writ petitions were later on withdrawn. The elections were held in the year 2011 and the change reports bearing No. 835 of 2013 and 894 of 2013 were filed. Respondent No. 3 was not continued in the Managing Committee. Therefore, he felt

aggrieved and he joined hands of Vijay Gujar. Complaint was filed before the learned J. M. F. C. stating that the writ petitioners have committed offence and it was prayed that investigation should be directed under Section 156(3) of Cr. P. C. The said prayer was allowed and on the basis of the said order F. I. R. has been lodged.

04. It has been alleged in the complaint that the elections held in the year 2006 were not proper and the record for the election was fabricated and bogus. It was stated that many documents have been forged and therefore, in all 17 accused persons have committed offence punishable under Sections 120B, 406, 409, 420, 467, 468, 471 read with Section 34 of I. P. C. The petitioners contend that there was total suppression of fact by the informant that various orders have been maintained before the proper forum. Respondent No. 2 in fact had not challenged the change report No. 596 of 2006 and 810 of 2006. When respondent No. 3 was not continued in the Managing Committee, in order to take revenge the complaint has been filed. The learned Magistrate has not taken into consideration all these facts before issuing the order under Section 156(3) of Cr. P. C. They have therefore, prayed for quashment of the F. I. R.s. It will not be out of place to mention here that Vijay Gujar is the informant

in C. R. No. 31 of 2014 that is the respondent No. 3. However, he has also raised almost similar grounds as raised by the respondent in Criminal WP No. 662 of 2014.

05. Affidavit-in-reply have been filed by respondent No. 3 in both the cases and they have relied on certain documents. The contents of their affidavit-in-reply is nothing but the repetition of the facts, hence, not reproduced.

06. Heard learned Senior Counsel Mr. R. N. Dhorde I/b Mr. V. R. Dhorde, Advocate for petitioners in both the petitions, learned A. P. P. Mr. R. V. Dasalkar and learned Advocate Mr. Subodh P. Shah for respondent No. 3 in Criminal Writ Petition No. 662 of 2014 and learned Advocate Mr. D. B. Thoke for respondent No. 3 in Criminal Writ Petition No. 558 of 2014. All the learned Advocates have taken us through various orders those have been passed by Assistant Charity Commissioner, Joint Charity Commissioner and learned District Judge whenever those change reports have been challenged. In the nutshell, the result is reproduced in the contention of the petitioners.

07. In their respective complaints the original informants have tried to contend that there are about 568 members of the trust and out of them 465 are alive and

therefore, as per the constitution all those members ought to have been informed about the election as well as notice ought to have been given to them. It is stated that in order to keep all others away from the process, false proceeding book was prepared in respect of affairs those had taken place on 10.4.2011 and 5.6.2011. It was falsely shown that an Election Officer has been appointed. False voters list was prepared. Accused No. 12 was not even major, yet, he was shown as member and therefore, all of them have committed offence by conspiring with each other.

08. It appears that the matter pertains to two groups in a trust. The change report filed earlier i.e. No. 132 of 1996 came to be allowed on 30.3.2001. It became final, though, the another change report was also filed, it was rejected. It is a fact on record that a new constitution was adopted by the Managing Committee in 2001 and thereafter, when the elections were held the respondent No. 3 in Criminal W. P. No. 662 of 2014 took part in the election and he enjoyed the post after winning the election. Now, he can not challenge those proceedings. Now he is coming with a case that the nomination papers do not bear his signature. However, prima facie it appears that he had enjoyed the post. Further, as regards the respondent No. 3 in Writ Petition

No. 558 of 2014 is concerned, his attempt to challenge the elections after adopting the new constitution before this Court was rejected and then when he again tried to challenge the same, he has withdrawn those writ petitions. The subsequent fact is also required to be considered that change report No. 73 of 2015 was filed on 8.10.2013 with condonation of delay came to be decided by learned Assistant Charity Commissioner, Dhule on 18.3.2016 and it has been rejected. However, in the present position, we are required to consider what was the position on the date of complaint and what is alleged in the complaint. It was in respect of the election that took place in the year 2006. There is definitely apparent suppression of fact by the respondent No. 3 in Criminal Writ Petition No. 662 of 2014. It has been mentioned that he had never filled any kind of nomination paper, but, documents to that effect have been falsely prepared. Important point is that he claims to be the member of the trust and the elections are stated to have been held in 2006 and prior to that the constitution was prepared, proceeding book was prepared and voters list was also stated to be prepared. Yet, the complaint appears to have been filed in 2014 i.e. after a gap of about 8 years. We do not find any explanation coming forward, explaining the delay. Thus, it can be

seen that since 2001 there is dispute between the two groups and therefore, the complaints appeared to be filed with mala fide intention.

09. The learned Advocate appearing for the petitioners relied on **Tukaram Annaba Chavan and Anr. V/s Machindra Yeshwant Patil, (AIR 2001 Supreme Court 994)** wherein Hon'ble Supreme Court has observed that :

"On perusal of the record we find that a contention that in the proceedings relating to the confirmation or otherwise of the change report, a contention has been raised that the documents on the basis of which the report has been submitted have been forged and fabricated by the appellants. When the matter is pending before Assistant Charity Commissioner who is competent to determine the validity of the change report in the interest of justice and for a fair trial, the proceedings in a criminal cases remain suspended till the proceeding pending before the Assistant Charity Commissioner is disposed of."

He had therefore prayed for stay to the criminal proceedings also. As aforesaid, even the subsequent change report which was filed by the petitioner came to be rejected. It is not necessary that the proceeding should be stayed. Further, it is also to be noted that when the proceedings were before the Assistant Charity

Commissioner, none of the complainants / informants had attempted to file an application asking the concerned authority to take action in respect of forged documents. Therefore, it would be a futile exercise to ask the petitioners to face the trial. Case is made out for exercising the powers of this Court under Articles 14 and 226 of Constitution of India and under Section 482 of Code of Criminal Procedure.

10. Hence, following order;

ORDER

(i)Both the petitions are allowed.

(ii)Relief is granted in terms of prayer clause

(B) and (C).

(iii)Rule made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-.