

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.714 OF 2016

Netaji s/o Shrirang Somwanshi,
Age : 55 years, Occu. Secretary
and Agriculture, R/o Wanvada,
Tq. Ausa, District Latur

PETITIONER

VERSUS

1. Kishor Dyanoba Patil,
Age : 38 years, Occu. Doctor
and Agri., R/o Wanvada, Tq.
Ausa, District Latur
2. Pravin Dyanoba Patil,
Age : 40 years, Occu. Agri.
R/o Wanvada, Tq. Ausa,
District Latur
3. Sow. Anusaya Chandrakant Gayakwad,
Age : 40 years, Occu. Agri.
R/o Wanvada, Tq. Ausa, Dist. Latur
4. Uddhav Keshavrao Patil,
Age : 35 years, Occu. Agri.,
R/o Wanvada, Tq. Ausa, Dist. Latur
5. Deepak Dyanoba Patil,
Age : 35 years, Occu. Agri.
R/o Wanvada, Tq. Ausa, Dist. Latur
6. Venkat Manohar Somwanshi,
Age : 33 years, Occu. Agri.,
R/o Wanvada, Tq. Ausa, Dist. Latur
7. Devki w/o Deepak Patil,
Age : 23 years, Occu. Household,
R/o Wanvada, Tq. Ausa, Dist. Latur
8. Shahaji Shrirang Patil,
Age : 40 years, Occu. Agri.
and Librarian, R/o Wanvada,
Tq. Ausa, Dist. Latur

9. The State of Maharashtra,
through P.S., AUSA

RESPONDENTS

Mr. Fayaz K. Patel, Advocate for the petitioner
Mr. Manoj D. Shinde, Advocate for respondent Nos.1 to 8
Mr. R.B. Bagul, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 20th JUNE, 2018

ORAL JUDGMENT :

Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties, heard finally.

2. The petitioner has taken exception to the order dated 12th January, 2016, passed below application (Exh-120) in Regular Criminal Case (RCC) No.249 of 2011 pending before the learned Judicial Magistrate, First Class, AUSA, whereby the request of the prosecution for sending the signatures of the complainant namely Netaji Shrirang Somwanshi and one Shrihari Bhagwan Suryawanshi alongwith the papers of Change Report to the handwriting expert for the examination and opinion, came to be rejected.

3. The learned counsel for the petitioner (original complainant) submits that a complaint was filed by the petitioner against respondent Nos.1 to 8 for the offences punishable under Sections 420, 409, 465, 467, 468, 469, 470, 471 read with Section 34 of the Indian Penal Code ("IPC", for short), on the allegations that though the complainant was the Chairman and the witnesses named in the complaint were the members of Shrikrushna Sarvajanic Vachnalaya, Wanvada, Tq. Ausa, respondent nos.1 to 8, in furtherance of their common intention, sent a false Change Report to the Assistant Charity Commissioner on the basis of false and forged signatures of the complainant and the witnesses, so as to record respondent nos.1 to 8 as the office bearers and members of the Managing Committee of the said Library. The said complaint was referred by the learned Magistrate to the police for investigation under Section 156(3) of the Code of Criminal Procedure. After conducting the investigation, respondent nos.1 to 8 came to be charge-sheeted for the above-mentioned offences.

4. The learned Counsel for the petitioner submits that initially, application (Exh.86) was filed by the complainant with a request to send the documents in

respect of the Change Report and the signatures of the complainant and the witnesses for examination and report of the handwriting expert. The said application was not pressed. Therefore, another application (Exh.96) was filed for calling the file of the Change Report from the office of the Deputy Charity Commissioner and for sending the signatures of the complainant and the witnesses for examination and report of the handwriting expert. The said application was allowed partly and the file of the Change Report Enquiry No.192 of 2010 was ordered to be called from the office of the Deputy Charity Commissioner. However, the prayer for sending the signatures to the handwriting expert for examination and report was not granted on the ground that the complainant had not shown exactly as to which documents were required to be sent to the handwriting expert.

5. The learned Counsel further submits that in view of the order passed below application (Exh.96), the learned Assistant Public Prosecutor filed application (Exh.120) with a specific request that the signatures of the complainant and one witness namely, Shrihari Bhagwan Suryawanshi as well as the signatures on the documents connected with Charge Report were required to be sent to

the handwriting expert for examination and report. However, the learned Magistrate rejected that application on the ground that the application did not specify as to whose false signatures came to be made by the accused persons on those documents. The learned Counsel submits that this reasoning of the learned Magistrate is totally unjustifiable. It is immensely necessary to send the signatures of the complainant and the witness namely, Shrihari Bhagwan Suryawanshi alongwith the documents bearing disputed signatures to the handwriting expert for digging out the truth. He, therefore, prays that the impugned order may be set aside and the signatures of the complainant and that of one witness Shrihari Bhagwan Suryawanshi as well as the concerned Change Report bearing disputed/forged signatures of the office bearers, may be ordered to be sent to the handwriting expert. The petitioner is ready to bear the expenses for examination of documents by the handwriting expert.

6. The learned Counsel for respondent nos.1 to 8 strongly opposed the petition. He submits that the application (Exh.86) was filed by the petitioner for the same relief. However, it was not pressed. Thereafter,

the same relief was claimed in the application (Exh.96), which was not granted by the learned Magistrate. The order passed on the application (Exh.96) was not challenged either by the prosecution or the petitioner. Therefore, this third application (Exh.120) for the same relief would not be maintainable. He submits that the petitioner had filed application for sending the documents and signatures of the witnesses and that of himself to the handwriting expert just to prolong the trial and harass respondent nos.1 to 8. He submits that the petitioner cannot be allowed to fill-up the lacunae. He supports the impugned order and prays that the Writ Petition may be dismissed.

7. It is the case of the petitioner (original complainant) that respondent Nos.1 to 8, in furtherance of their common intention, sent a false and forged Change Report to the Assistant Charity Commissioner bearing the forged signatures of the petitioner and other office bearers of the Library and therefore, to establish the above mentioned offences, it was immensely necessary to send the said Change Report as well as the signatures of the petitioner and one of the witnesses namely Shrihari Bhagwan Suryawanshi to the handwriting

expert to make it clear whether the Change Report was false and forged one or otherwise. It seems that the application (Exh.86) was disposed of as it was not pressed at that stage. There was no finding of the learned Magistrate on merits of that application. The application (Exh.96) was partly allowed and the claim of the petitioner for sending the papers of Change Report and signatures of the petitioner and the witnesses to the handwriting expert on the ground that there was no specific mention as to which documents were required to be sent to the handwriting expert. As per this order also, the claim of the petitioner for sending the papers and signatures to the handwriting expert was not rejected on merits. Therefore, in my view this writ petition is maintainable. In the present application (Exh.120), the petitioner has specifically mentioned that the signatures of the petitioner and the witness namely Shrihari Bhagwan Suryawanshi are required to be sent to the handwriting expert along with the papers of Change Report. This application (Exh.120) is quite maintainable.

8. In order to dig out the truth, it would be immensely necessary to send the papers of Change Report

and the signatures of the petitioner and witness namely Shrihari Bhagwan Suryawanshi to the handwriting expert for examination and report. If respondent Nos.1 to 8 have not sent any false and forged Change Report, the opinion of the expert would be helpful to them to prove that fact. The petitioner is ready to bear the expenses for examination of the documents by the handwriting expert. No prejudice would be caused to respondent Nos. 1 to 8 if the prayer of the petitioner for sending the documents and the signatures to the handwriting expert is accepted. The learned Magistrate, in paragraph 5 of the impugned order observed that the application does not specify as to whose false signatures came to be made by the accused person on the disputed documents. These observations are contrary to the contents of the application (Exh.120). The impugned order, therefore, cannot be said to be legal, proper and correct. It is liable to be set aside. The application (Exh.120) will have to be allowed. In the result, I pass the following order:-

ORDER

- (A) Rule is made absolute in the following terms.
- (B) The impugned order is quashed and set aside.

- (C) Application (Exh.120) filed in R.C.C.No.249 of 2011 is allowed.
- (D) The disputed Change Report and the signatures of the petitioner and that of the witness namely Shrihari Bhagwan Suryawanshi be sent to the handwriting expert for examination and report.
- (E) The petitioner shall deposit the requisite expenses for examination of the documents by the handwriting expert within two weeks from today in the Trial Court, failing which the application (Exh.120) would stand rejected.
- (F) Inform the Trial Court accordingly.
- (G) The Writ Petition is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE