

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1738 OF 2018

Pravin Baburaja Sarda,
Age : 50 years, Occu. Business,
R/o Umri Railway Station, Tq. Umri, ...Applicant.
Dist. Nanded.

Versus

- 1] The State of Maharashtra,
Through Umri Police Station,
Dist. Nanded.
- 2] Pandurang Babasaheb Deshmukh
Gorthekar, Age : 45 years, Occu.
Agril,
R/o Hanuman Galli, Umri,
Tq. Umri, Dist. Nanded. ...Respondents

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Mr. A. M. Gaikwad, Advocate for Applicant.

Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1-
State.

Mr. H. I. Pathan, Advocate for Respondent No. 2.

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**CORAM : T. V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 03-12-2018.

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

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

02. Present application has been filed under Section 482 of Code of Criminal Procedure for quashing and setting aside the criminal proceedings initiated against the applicants in O. M. C. A. No. 77 of 2018, the order passed below the same by learned J. M. F. C. Umri, Dist. Nanded on 1.6.2018 as well as the registration of F. I. R. vide C. R. No. 88 of 2018 with Umri Police Station on 2.6.2018.

03. The applicant has come with a case that he has been made as accused No. 5 in the proceedings. The application came to be filed by respondent No. 2 in which the learned Magistrate has passed an order of investigation under Section 156(3) of Cr. P. C. The applicant contends that he is a businessman running a grocery shop under the name and style of Anand Trading Pvt. Ltd. since 1994. He had contested the elections to the Umri Municipal Council in the year 2006. He was elected as Councilor. Thereafter, he was also elected as Vice-President. After working for about two and half years, he was elected as a President of Municipal Council in year 2009. He, thereafter worked till 2011. Elections were held in the year 2011 and he was again elected as Councilor and Vice-President. In 2016 elections were declared for the tenure of 5 years. He contested that election also and the results were declared on 19.12.2016.

All the Councilors as well as directly elected President, belong to the political party of the applicant were declared as elected. He was appointed as leader of the group (गटनेता) vide letter dated 19.12.2016. The said communication was given to Collector. Further, as per the provisions of Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act, 1969 certain rights and duties were prescribed on "Gatneta". The provisions were amended in 2016 and a President is to be elected directly from the voters. As per the rules, procedure was laid down in 2010 for nomination of Councilors and the President is given the duty to nominate. After the nomination letter is sent, the proposal was to be scrutinized at the level of Collector. Objections if any be entertained by Collector or designated Officer and thereafter, the decision was to be given which should be then treated as final. Accordingly, he had nominated one Shelke Irba Mariba and Shaikh Babu Baig Hussain Baig. The letter of nomination was forwarded to Collector on 28.5.2017. On the basis of validity declared by Collector, the nominated persons were declared as elected as nominated Councilors in the General Body Meeting dated 29.5.2017. After lapse of about one year the respondent No. 2 lodged a private complaint with J. M.

F. C. Umri contending that the accused persons by indulging in the act of cheating and fabrication of document, procured certificate in connivance with the accused Nos. 3 and 4 who are the office bearers of the trust and present applicant is also involved in the same. It is stated that without scrutinizing anything and without considering the rules, the learned Magistrate passed the order of directing investigation to be done by the Police Officer under Section 156(3) of Cr. P. C.

04. The applicant contends that he is not at all involved in commission of any crime such as cheating or fabrication of record. After those nominated Councilors had shown interest, he had sent proposal to appoint them. The scrutiny was to be done by the Collector in respect of the documents. After verifying the record, the nominations were held to be valid by the competent authority. Under such circumstance, now it can not be stated that there is fabrication of any document. The F. I. R. has been lodged with ulterior motive. Under such circumstance, he prayed for quashment of the Orders by learned Magistrate as well as the F. I. R.

05. Heard learned Advocate Mr. A. M. Gaikwad for applicant, learned A. P. P. Mr. A. A. Jagatkar for State-

respondent No. 1 and Mr. H. I. Pathan, learned Advocate for respondent No. 2. Perused the documents on record. Respondent No. 2 had filed the private complaint contending that original accused Nos. 3 and 4 are stated to be the President and Secretary of a public trust by name Saibaba Sevabhavi Sanstha, Umri. Accused Nos. 1 and 2 i. e. the nominated Councilors, have obtained documents from accused Nos. 3 and 4 stating that accused No. 1 was Treasurer and accused No. 2 was Joint Secretary of the said institute since 5 years prior to 27.5.2017. In fact, when the complainant obtained information from Assistant Charity Commissioner, Nanded regarding the said institute; he could not find any such information supplied in PTR extract. Thus, the documents have been falsely created and by cheating the public, the nomination has been obtained. It is stated that the present applicant-accused No. 5 had common intention with the accused Nos. 1 to 4.

06. It appears that learned Magistrate had taken into consideration the contents of the complaint and documents, the affidavit filed in support, and the fact that written complaint was given by the complainant to Superintendent of Police, Nanded. No cognizance was taken by Police. The learned Magistrate observed that prima

facie case has been made out to send the matter for investigation under Section 156(3) of Cr. P. C.

07. It can be seen from the letter dated 29.12.2016 that the present applicant was elected as "Gatneta" and the said communication was given by the political party to whom the applicant belongs, to Collector, Nanded. Perusal of the Govt. Resolution dated 21.12.2016 would give a picture as to what is the procedure for nominating a Councilor. It has been prescribed that "Gatneta" can nominate Councilors and accordingly give the names to Collector. After the proposal is received, Collector either personally or through designated officer would scrutinize the recommendation letter and eligibility. After the scrutiny, the designated officer would forward the list of such verified persons to President for further action. The decision taken in respect of validity by the Collector or designated officer would be final and binding on the President. A provision is also made for appeal or relief to be claimed against the said decision under Section 51(A)(5) and 21 of Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act. Thus, it is to be noted that when the present applicant had given letter dated 28.5.2017 to the Collector or designated officer suggesting or nominating the names of two persons,

then definitely, it will have to be presumed that the requisite scrutiny was made by the Collector Office before giving consent or finalizing names of those two nominated persons. After the scrutiny, the nomination was held to be valid. Such communication is given by Sub-Divisional Officer, Dharmabad on the same day i.e. 28.5.2017. In the complaint, the complainant has not stated that he felt aggrieved by the said decision and he had adopted the procedure under Section 51(A)(5) and 21 of the said Act. Without challenging the said nominations and adopting proper procedure, complainant can not take any other recourse. Further, if at all he had the intention to say that on the same day of proposal the verification was also done and therefore, there is haste. At the most, such action can be challenged in civil and not under criminal laws. No allegations have been made against the officer who had scrutinized and given opinion or certified the nominations.

08. As regards the role of the present applicant is concerned, he had simply forwarded the names of the two persons alongwith the documents submitted by them. It can not be stated that in any way he had prepared or fabricated those documents. Thus, it is to be noted that the F. I. R. appears to have been filed with some

political motive with mala fide intention and no offence is made out against the present applicant. It would be a futile exercise to ask him to face trial with such contents of complaint. Therefore, under such circumstance, power of this Court under Section 482 of Cr. P. C. is required to be invoked within the parameters laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]**.

09. Hence, following order;

ORDER

(i)The application is allowed.

(ii)Relief is granted in terms of prayer clause "B".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-