

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

CRIMINAL APPICATION NO. 4701 OF 2015

Sunil s/o. Paraji Tambe,
Age 40 years, Occu. Service
i.e. Lecturer, R/o. 40, "Mamata",
Shri Nagar, Chittod Road, Dhule,
Tq. & Dist. Dhule.

....Applicant.

Versus

1. The State of Maharashtra
Through City Police Station, Dhule,
Dist. Dhule.
2. Mr. Anil Bhalchandra Wagh,
Age 53 years, Occu. Service
i.e. I/C Principal, Shri. Shivaji
Vidya Prasarak Sanstha,
Patil Bandhu, Shivaji Road,
Near Swami Samarth Mandir,
Dhule, Dist. Dhule.

....Respondents.

Mr. Sachin S. Deshmukh, Advocate for applicant.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. Pradeep Deshmukh h/f. Mr. Y.P. Deshmukh, Advocate for
respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : 07/08/2018.**

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

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 175/2015 registered with City Police Station Dhule for offences punishable under sections 420, 409, 467 etc. of Indian Penal Code. Both the sides are heard.

2) The F.I.R. is given by one Anil Wagh, who is employee of School of Arts run by S.S.V.P. Institution. He has mentioned that he is Principal of that college and the F.I.R. was given on 26.8.2015. The period of commission of crime is mentioned from year 2010 to April 2012.

3) The present applicant was working as a Lecturer in aforesaid college. On 29.5.2013 applicant gave letter to the Institution to inform the Institution that he had completed post graduate degree in Master of Fine Arts (M.F.A.) in the year 2012. As this course is full time course of two years and as the college where the course was completed is situated at Jalgaon, the report came to be given as it was practically impossible for the present applicant to work as Lecturer in aforesaid Institution of the first informant and also to complete M.F.A. course. Both the courses being full time courses, their time was between 11.00 a.m. to 5.00 p.m. It was submitted for the respondent, first informant that the time fixed for full time course is same by the University. It was submitted that the course is conducted by college affiliated to University from Jalgaon.

4) There are allegations in the F.I.R. that when as per the Circular and Rules, the employee needs to take permission for taking

admission to such course and he is also expected to take leave, if course is full time, no such thing was done by the present applicant. Allegations are made that the applicant did not avail leave and he took salary during aforesaid period and he was not entitled to take the salary as per the Rules. By making these allegations, it is contended that the applicant has deceived even to the Government and thereby offence is committed. In the F.I.R., time of both the courses is mentioned which is mentioned above.

5) The learned counsel for applicant submitted that all the aforesaid allegations and contentions made against the applicants were considered by the competent authority, Art Director Maharashtra in the order dated 11.8.2015. It appears that the show cause notice given against the present applicant by the Institution due to aforesaid incident was challenged. The allegations were considered and the authority observed that there was no deceiving from the present applicant as he had imparted education in the college of employer. Thus, the contention made by the Institution, employer was dealt with.

6) The learned APP submitted that the factual aspect of the matter cannot be ignored. He submitted that if applicant was imparting education in the college where he was employed, then it

was not possible for him to attend the full time course at Jalgaon. He submitted that at either place like Jalgaon or Dhule false record of attendance is created in favour of the present applicant. It can be said that the step like issuing notice was taken by the employer against the present applicant after starting of some dispute in respect of the post of Principal. Though that circumstance is there and there is possibility that only to pressurize the applicant, F.I.R. was given, the aforesaid circumstances cannot be ignored.

7) The learned APP drew the attention of this Court to the Circular issued by North Maharashtra University, Jalgaon with regard to eligibility, verification and scrutiny of eligibility in respect of various courses of the University. He drew the attention of this Court to Clause 20 of this Circular bearing No. 140/2012. That clause is as under :-

"20. ADMISSIONS TO THE STUDENTS WHO ARE IN SERVICE : Almost all courses in the University are full time courses. Therefore students who are in service, should not be admitted as a regular student directly. Therefore Admission Authority should ensure that no such students be admitted. Before giving such admissions the Principal of the College should furnish following documents to the University and obtain approval.

1. Permission letter from the concerned

Employer.

2. Certificate regarding duty time and working hours.
3. Time table of the Class/Course.
4. Leave sanction order if any from the concerned employer.

8) It can be said that the applicant had either not given information that he was employed at Dhule as Lecturer while taking admission or even after giving information, this point was not addressed by the concern. It needs to be ascertained as to who helped the applicant in creating of such false record of attendance. The learned counsel for applicant submitted that in the present matter, only F.I.R. given by the employer is under consideration and the other possibilities cannot be considered. He further submitted that the first informant was not even the Principal of the College and so, the F.I.R. could not have been registered. Both the submissions are not acceptable. If it is noticed that at either place that false record was created and the authority or the Government was cheated and by creating false record, the certificate was obtained of post graduate course or the salary was obtained, then it can be said that the case can be filed for offences punishable under sections 420, 467 etc. of IPC. It can be said that if the amount is misappropriated by creating false record of attendance, then it will

be misappropriation of Government money.

9) The learned counsel for applicant placed reliance on the observations made by the Apex Court in the case reported as **1992 Supp (1) Supreme Court Cases 335 [State of Haryana and Ors. Vs. Bhajan Lal and Ors.]** and submitted that it is nothing but victimization of the applicant due to the dispute of aforesaid nature and so, the F.I.R. needs to be quashed. This submission cannot be accepted in the case like present one. Even if there are some malafides behind making allegations, if the Court finds that some offence was apparently committed, the Court is not expected to interfere and prevent the investigating agency from making investigation. When cognizable offence is committed, the police have statutory powers to make investigation in to the matter like in present case and particularly when there are aforesaid circumstances, this Court is not expected to interfere. In the result, following order.

ORDER

The application is dismissed. Interim relief is vacated.
Rule is discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/