

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4666 OF 2016

- 1] Kalimurrehman Zilleurrehman,
Age : 60 years, Occu. : Advocate,
R/o Kagzi Darwaza, Beed.
- 2] Shaheda Begum Shaikh Ismail,
Age : 49 years, Occu. : Service,
R/o Shahensha Nagar, Beed. ...Applicants

Versus

- 1] The State of Maharashtra,
Through its Police Inspector;
City Police Station, Beed.
- 2] Shaikh Nazeer Shaikh Mahemood,
Age : 60 years, Occu. : Contractor,
R/o Mali Galli, Azizpura, Beed.
- 3] Faruqi Masiyoddin Amjadoddin,
Age : 70 years, Occu. : Retired Teacher,
R/o Juna Bazar, Beed. ...Respondents

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Mr. S. S. Kazi, Advocate for Applicants.
Mr. R. V. Dasalkar, A. P. P. for Respondent No. 1-State.
Mr. R. S. Deshmuh, Advocate for Respondent Nos. 2 & 3.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 16-10-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J)

01. The present application has been filed under Section 482 of Cr. P. C. invoking the inherent powers of this Court for quashing and setting aside the private complaints bearing Misc. Criminal Appln. No. 244 of 2016 and Misc. Criminal Appln. No. 447 of 2016 passed by learned J. M. F. C., at Beed issuing directions under Section 156(3) of Cr. P. C. and the F. I. R. lodged on the basis of said order.

02. Applicant No. 1 is stated to be the Secretary in National Welfare Trust and applicant No. 2 is working as Headmistress at Model Urdu Primary and High School at Azizpura, Beed, which is run by the National Welfare Trust. Said trust is receiving 100% grant in aid. Respondent Nos. 2 and 3 are stated to be the Joint Secretary and Treasurer of National Welfare Trust till 2014. They were removed in 2014 and other persons were elected in their place. Change report to that effect was submitted before Assistant Charity Commissioner, Beed and the same is pending. It is stated that the respondent

Nos. 2 and 3 have joined hands with a rival group headed by one Siraj Deshmukh who was holding the post of President till 2011. Two change reports came to be filed in 2011. One by Siraj Deshmukh bearing No. 663 of 2011 and second by applicant No. 1 bearing No. 1461 of 2011. The respondent Nos. 2 and 3 have joined the applicant No. 1 when the said change report was filed by the applicant No. 1. But, later on, they have joined hands of the rival group. The respondent Nos. 2 and 3 had filed the application to add them as a party in the enquiry report and thereafter, they prayed for rejecting the change report filed by the applicant No. 1. Learned Assistant Charity Commissioner had accepted the contention of respondent Nos. 2 and 3 and added them as a party to the change report. The applicant No. 1 has approached this Court in writ petition. Ad-interim relief has been granted in his favour and the matter is now pending before Assistant Charity Commissioner, Beed. The change report bearing No. 663 of 2011 was allowed by learned ACC, Beed; which was thereafter challenged by the applicant No. 1 before Joint Charity Commissioner, Latur in Appeal No. 10 of 2016. It is kept for final adjudication. Respondent Nos. 2 and 3 had filed a common complaint alleging that the applicant No. 1 has forged their signature while

filing change report. After considering the complaint filed by respondent No. 2, it was transpired to the Police Inspector that no criminal case is made out and therefore, he refused to register F. I. R. and therefore, respondent Nos. 2 and 3 approached to J. M. F. C. by filing Misc. Criminal Appln. No. 244 of 2016. The learned Magistrate after perusing the complaint directed the respondent No. 2 to lead evidence under Section 202 of Cr. P. C. The respondent No. 3 was shown as witness in that criminal application. However, thereafter, the respondent No. 3 filed a separate Misc. Criminal Application bearing No. 447 of 2016 and prayed for directions for investigation under Section 156(3) of Cr. P. C. by joining the applicant No. 2 as accused. Respondent No. 3 has concealed the material fact that the respondent No. 2 has already filed a private complaint for the same allegations. Respondent No. 3 has played fraud on the Court and then obtained orders for investigation under Section 156(3) of Cr. P. C. It is therefore submitted that the question is whether 2 private complaints are maintainable in respect of same allegations. F. I. R. on the basis of second complaint is not maintainable. Further, they could have approached the Assistant Charity Commissioner to take action against the applicants as per the guidelines of **Mohammad Khaja**

Moinuddin Vaziruddin V/s The State of Maharashtra, (in Cri. Appln. No. 2969 of 2013 decided by this Court). It is also stated that the learned Magistrate ought not to have passed order under Section 156(3) of Cr. P. C. mechanically. It is stated that the F. I. R. as well as the complaint on the basis of which the said F. I. R. has been lodged is bogus and based on a concocted story. No grants were released by the Govt. in the year 2000 and therefore, there is no question of taking money of grants as alleged in the complaint. They, therefore, prayed for quashment of the F. I. R., order passed by the learned Magistrate and also quashment of both the private complaints.

03. The application has been objected by respondent Nos. 2 and 3 by filing affidavit-in-reply which is nothing but the repetition of their contentions. They have also filed certain documents which would be referred later on.

04. Heard Mr. S. S. Kazi, Advocate for Applicants, Mr. R. V. Dasalkar, A. P. P. for Respondent No. 1-State and Mr. R. S. Deshmukh, Advocate for Respondent Nos. 2 & 3.

05. It has been submitted on behalf of the applicants that when already a private complaint was filed

and the another person i.e. respondent No. 3 was cited as a witness it was not at all necessary for the witness to file a fresh complaint. It can be clearly seen that as they could not get order for investigation under Section 156(3) in the first matter, they filed second complaint. The contents of both the complaints are same. Second complaint is not at all maintainable and therefore, the F. I. R. lodged on the basis of second complaint is also not maintainable. While passing the order of investigation under Section 156(3) of Cr. P. C. the learned Magistrate did not consider the ratio laid down in **Priyanka Shrivastava and Ors. V/s The State of U. P. and Ors., (MANU/SC/0344/2015)**, wherein it has been held that the Magistrate after narrating the allegations, without any application of mind had passed order of registering the F. I. R. for the offences mentioned in the application. Magistrate should have taken note of allegations in entirety, the date of incident and whether any cognizable offence was remotely made out or not. He also relied on the decision in **Rajeshwarrao and Ors. V/s The State of Maharashtra, The Police Inspector, Chakur Taluka Police Station and Shivhar, (2014 AllMR (Cri.) 573)**, wherein it has been observed that :

"21. The Assistant Charity Commissioner, is an

authority constituted under the Bombay Public Trust Act, and is vested with the powers, duties and functions under said Act. The Assistant Charity Commissioner is vested with powers of Civil Court. Therefore, if any offence is committed by the accused in the process of any investigation or enquiry, it is an independent matter to be dealt with by the competent authority under the Bombay Public Trust Act, under the provisions of Chapter XIV read with Chapter XXIV of the Code of Criminal Procedure. The respondent No. 3 has no role to play in such matter particularly by way of lodging a FIR in that regard.

22. Moreover, facts described in the FIR which are emphasized by underlining and supplying emphasis, do not conform to the description of narrating as to how fabrication has occurred and as to how the State and/or Assistant Charity Commissioner is cheated. In the background that it may be the most turn out to be offence purported to be committed before the competent Court, no cognizance would be competent by the police in absence of report by the Public servant concerned.

23. In spite of the fact that the opinion was sought by the police as to registration of offence from Deputy Director of Prosecution and that the offence was registered thereafter, does not excuse the police from application of mind on their own before registration of offence."

06. The learned Advocate appearing for respondent No. 2 has relied on the decision in **Bhaurao Dagdu Paralkar V/s State of Maharashtra, (AIR 2005 (SC) 3330)**, wherein it has been elaborated as to what is "fraud" and it has been observed that each case will have to be considered on its own merits. It is submitted that on the basis of false change report, the applicants had functioned and they have made illegal appointments of teachers by suppressing the facts from the Education Officer. They have prepared false minutes and documents to make the said appointments and therefore, it is a fraud affecting the State exchequer also when the school is receiving 100% grants. Under such circumstance, a thorough investigation was required which could not have been monitored by the learned Magistrate and therefore, he was justified in passing the order of investigation under Section 156(3) of Cr. P. C. It can not be said to be a second complaint. It is separately filed by respondent No. 3.

07. It appears that there is dispute in between the trustees. What is apparent even on the basis of contents of the present application that the change report which was filed by the present applicant No. 1 was stayed by virtue of order passed by this Court. However, the change report filed by the rival group came to be allowed. Under

such circumstance, whether the applicant No. 1 would be justified in making any kind of administrative act in the trust was a question. Documents have been produced to show that appointments of teachers have been made. In his complaint the respondent No. 3 has stated that in spite of knowledge that the tenure of earlier directors / trustees has come to an end, yet, applicant No. 1 posed himself as a Secretary and gave advertisement for recruitment of teachers on 1.6.2013. Prior permission of the Education Officer was not taken. It is stated that certain documents have been falsely prepared, false signatures have been made and salary amount has also been obtained from the Govt. All these facts have been noted by the learned Magistrate and then order of investigation under Section 156(3) has been passed. Now, as regards allegation of second complaint is concerned, it is to be noted that the alleged first complaint is filed by respondent No. 2. The impugned complaint on the basis of which F. I. R. is lodged is definitely not filed by the respondent No. 2 and therefore, it can not be said that the Misc. Criminal Appln. No. 447/2016 was "second complaint", therefore, definitely there is no substance in the say of applicants that the said complaint and the F. I. R. based on the same is not maintainable. If there are

two or more victims or persons affected by a criminal act of a person, they can take action independently of each other against the wrong-doer.

08. As regards the ratio laid down in **Rajeshwarrao and Ors.** (Supra) is concerned, the applicants can not take help of the same for the simple reason that the facts are different. The change reports filed by both the rival groups were still pending before the competent authority, when the matter was before this Court. However, in this case, the change report filed by the rival group has been accepted by learned Assistant Charity Commissioner. Though the change report filed by the applicant No. 1 is pending what effect it will have on the already allowed change report would be a civil aspect.

09. While passing the order under Section 156(3) of Cr. P. C., it appears that the learned Magistrate has taken account of all the allegations as well as the documents which were attached. When the allegations are that without any authority appointments are made and Govt. money has been obtained, then, definitely it requires investigation. After due application of mind it appears that the said order has been passed and therefore, it can not be set aside. Thus, there is no merit in the present

application. When there is prima facie substance in the allegations and the proceedings, the F. I. R. can not be quashed. No case is made out for using the powers of this Court under Section 482 of Cr. P. C.

10. Hence, following order;

ORDER

(i) Application is hereby dismissed.

(ii) An interim relief granted earlier stands vacated.

[SMT. VIBHA KANKANWADI]

[T. V. NALAWADE]

JUDGE

JUDGE

Dahibhate/-.