

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1118 OF 2016

Haresh Motiram Aswani ...Applicant

Versus

State of Maharashtra and Anr. ...Respondents

**WITH
CRIMINAL APPLICATION NO.741 OF 2018
(For Intervention)
IN
CRIMINAL APPLICATION NO.1118 OF 2016**

Tuljo Narayandas Lakhani ...Intervener/Proposed Respondent

IN THE MATTER BETWEEN

Haresh Motiram Aswani ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

Mr.P.K.Dhakephalkar, Senior Advocate a/w Mr.Nilesh Kadam i/b
Mr.K.J.Patil, for the Applicant.

Mrs.P.P.Shinde, A.P.P for the Respondent-State.

Mr.Ravi Kadam, Senior Advocate a/w Mr.Subodh Desai and
Mr.S.R.Nargolkar, i/b Mr.Pawan Mali, for the Intervener.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 29th JUNE, 2018

ORDER (Per Revati Mohite Dere, J.) :-

1. Heard the learned counsel for the parties.
2. By this application, preferred under Section 482 of the Code of Criminal Procedure, the applicant seeks quashing of the FIR, registered vide C.R.No.261 of 2016, with the Tilak Nagar Police Station, Mumbai, on 16th August, 2016, for the alleged offences punishable under Sections 465, 467, 468, 471 of the Indian Penal Code.
3. Mr.Dhakephalkar, learned senior counsel for the applicant submitted that with respect to the allegations made in C.R.No.261 of 2016, there was an earlier FIR being C.R.No.218 of 2015, registered with the Pimpri Police Station, Pune and as such the 2nd FIR, being C.R.No.261 of 2016 could not have been registered. The learned senior counsel relied on the Judgment of the Apex Court in the case of ***Amitbhai Anilchandra Shah v/s Central Bureau of Investigation and Anr.***¹, in support of his submission that if C.R.No.261 of 2016 is not quashed, the applicant would have to undergo trial twice for the same offence. According to the learned senior

1 2013 AIR (SC) 3794

counsel, the allegation of forging the mark-sheets (F.Y.B.A and S.Y.B.A) of K.J.Somaiya College of Arts & Commerce, Mumbai, has also been alleged in the earlier charge-sheet filed by the Pimpri Police Station, Pune, i.e. in C.R.No.218 of 2015 and as such the applicant cannot be prosecuted twice for the same offence.

4. Mrs.Shinde, learned A.P.P opposed the application. An affidavit-in-reply of Mr.Shankar Shrirang Babar, Police Inspector attached to the Tilak Nagar Police Station, Mumbai, has been filed for opposing grant of any relief. The learned APP submitted that the 2 CR's i.e. C.R.No.218 of 2015 and C.R.No.261 of 2016 gave rise to two distinct cause of action inasmuch as, C.R.No.218 of 2015, registered with the Pimpri Police Station, Pune was with respect to the bogus provisional degree certificate (issued by the Periyar University, Salem, Tamil Nadu), submitted by the Applicant with the Complainant-Bank, whereas, C.R.No.261 of 2016 registered with the Tilak Nagar Police Station, Mumbai, was with respect to the forged and fabricated mark-sheets (F.Y.B.A. and S.Y.B.A), for the year 1997-98 and 1998-99, of K.J.Somaiya College of Arts & Commerce, Mumbai, and as such no ground for quashing

of C.R.No.261 of 2016 was made out. Mr.Kadam, learned senior counsel for the Intervener, supported the learned A.P.P.

5. Heard the rival submissions advanced by the parties and perused the papers with the assistance of the learned counsel. The short question that arises for consideration in the aforesaid application, is whether the Applicant is being prosecuted twice for the same allegations? Our answer is in the negative.

6. A few facts, as are necessary, to decide the aforesaid application are as under:-

The applicant was elected as a Corporator of the Pimpri-Chinchwad Municipal Corporation during the period 1996-2001. During his tenure as a Corporator, the applicant was also a Member of the Standing Committee of the Pimpri-Chinchwad Municipal Corporation. The applicant was also elected as a Director of Seva Vikas Co-operative Bank, Pimpri (hereinafter referred to as 'the said Bank', for the sake of brevity), for two terms of five years each i.e. from 1996 - 2007. During the said period, the applicant had also worked as a Chairman of the said Bank. In 2010, the

bye-laws of the said Bank changed and one of the conditions of qualification came to be amended. By the said amendment, it was made mandatory for candidates desirous of contesting election to the post of 'Director' of the said Bank, to be a Graduate (a minimum qualification) from any recognized University. The Bank declared elections, pursuant to which, the applicant filed his nomination form by annexing the provisional certificate and mark-sheet of Periyar University, Salem, Tamil Nadu secured from 'Success Institute, Pune'. It appears that the applicant's nomination form was rejected as there was a discrepancy in the name of the applicant in the mark-sheet (Hari Motiram Khatri) and the nomination form (Haresh Motiram Aswani). The applicant produced a copy of the Official Gazette showing that he had changed his name from Hari Motiram Khatri to Haresh Motiram Aswani, in 1995 itself. However, despite the same, the applicant's nomination form was rejected. Against the same, the applicant has filed an Election Petition. It appears that pursuant to the correspondence entered into by the Bank with the Periyar University, Salem, Tamil Nadu, the Bank received information that the provisional certificate was not issued by them i.e. the University. Pursuant thereto, on 3rd April, 2015, the C.E.O. of the said Bank – T.N.Lakhani, lodged a complaint with the

Pimpri Police Station, Pune, alleging that the applicant had submitted a forged provisional degree certificate of Periyar University, Salem, Tamil Nadu, in connection with the election held by the Bank. The said complaint was registered vide C.R.No.218 of 2015 on 3rd April, 2015, with the Pimpri Police Station, Pune, alleging offences punishable under Sections 465, 467, 468, 471 r/w 34 of the Indian Penal Code. After investigation, charge-sheet was filed in the said case, as against the applicant and one Kiran Sindhia, who was running the Success Institute, at Pune. It is alleged that Kiran Sindhia had procured the certificate from a person in Periyar University, Salem, Tamil Nadu, and had handed over the same to the applicant. It appears that during the course of investigation of the said C.R. i.e. C.R.No.218 of 2015, registered with the Pimpri Police Station, Pune, the police made some correspondence with the Principal, K.J.Somaiya College of Arts & Commerce, Mumbai, with respect to the F.Y.B.A and S.Y.B.A mark-sheets purportedly issued by their College, to the applicant. The statement of the Principal, K.J.Somaiya College of Arts & Commerce, Mumbai, was recorded, wherein, she has stated that no such mark-sheets (F.Y.B.A and S.Y.B.A) were issued by their College. Pursuant thereto, the Police Sub-Inspector, Pimpri Police Station, Pune, sent a letter to the

Principal of K.J.Somaiya College of Arts & Commerce, Mumbai and requested the College to take legal action as against the applicant, within their jurisdiction, in connection with the fake/bogus mark-sheets of F.Y.B.A and S.Y.B.A. Pursuant thereto, the Principal, K.J.Somaiya College of Arts & Commerce, Mumbai, lodged a complaint with the Tilak Nagar Police Station, Mumbai, on 16th August, 2016, which was registered vide C.R.No.261 of 2016, as against the applicant, alleging offences punishable under Sections 465, 467, 468, 471 of the Indian Penal Code. In the said FIR, which is the subject matter of the application before us, the same is with respect to the mark-sheets (F.Y.B.A and S.Y.B.A) purportedly issued by K.J.Somaiya College of Arts & Commerce, Mumbai, in favour of the applicant. It appears that the said forged and fabricated mark-sheets were submitted by the applicant with the Periyar University, Salem, Tamil Nadu, in order to secure admission.

7. Having gone through the allegations made in the FIR/Complaint registered with the Pimpri Police Station, Pune vide C.R.No.218 of 2015 and the FIR/Complaint, being C.R.No.261 of 2016, registered with the Tilak Nagar Police Station, Mumbai, we are of the

opinion that the allegations in both the FIR's are distinct and different, giving rise to separate FIR's. As noted earlier C.R.No.218 of 2015, pertains to the provisional degree certificate submitted by the Applicant with the Bank, purportedly issued to him by the Periyar University, Salem, Tamil Nadu. The said provisional degree certificate which is alleged to be forged and fabricated, was submitted by the applicant along with his application, for contesting the elections for the post of Director of the Seva Vikas Co-operative Bank, Pimpri, In so far as the allegations in C.R.No.261 of 2016 are concerned, the same are with respect to the forged and fabricated F.Y.B.A and S.Y.B.A mark-sheets of the year 1997-98 and 1998-1999, purportedly issued by K.J.Somaiya College of Arts & Commerce, Mumbai, to the applicant. The said forged and fabricated mark-sheets of K.J.Somaiya College of Arts & Commerce, Mumbai, were submitted by the applicant, while taking admission in 2011 in Fast Track Mode with Periyar University, Salem, Tamil Nadu, in order to secure admission. It is thus evident, that the provisional degree certificate issued by the Periyar University, Salem, Tamil Nadu (subject matter of C.R.No.218 of 2015) was for contesting the election to the post of the Director of the said Bank, whereas the subject matter of C.R.No.261 of 2016 is in respect of forged

and fabricated mark-sheets (F.Y.B.A. and S.Y.B.A.) for the year 1997-98 and 1998-99, submitted by the applicant, for securing admission in Periyar University, Salem, Tamil Nadu. In C.R.No.218 of 2015, registered with the Pimpri Police Station, Pune, the provisional degree certificate was seized during investigation and charge-sheet has also been filed. In the present C.R. i.e. C.R.No.261 of 2016, registered with the Tilak Nagar Police Station, Mumbai, investigation is in progress and the forged and fabricated mark-sheets of F.Y.B.A. and S.Y.B.A, purportedly issued by K.J.Somaiya College of Arts & Commerce, Mumbai, are yet to be seized.

8. Having regard to the nature of allegations in both the C.Rs, we are of the opinion, that the said complaints/FIR's are independent and distinct, giving rise to separate cause of action. As far as the Judgment in the case of ***Amitbhai Anilchandra Shah (Supra)***, relied upon by the learned Senior Counsel for the Applicant is concerned, the same will have no application, inasmuch as, the facts in the present case are clearly distinguishable from the facts in that case.

9. In view of the aforesaid, there is no merit in the application.

The application stands dismissed.

10. In view of the aforesaid, the Intervention Application being Criminal Application No.741 of 2018, does not survive and the same is also disposed of.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)