

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1048 OF 2018

1. Baban @ Kisan S/o Patilba Kawad,
Age : 55 years, Occ. Agriculture,
R/o. At post Nighoj Tq. Parner,
District Ahmednagr

2. Muktar Shamir Inamdar,
Age : 25 Years, Occ. Agriculture,
R/o. At post Nighoj Tq. Parner,
District Ahmednagar

... PETITIONERS

VERSUS

1. The State of Maharashtra

2. The Director General of Police
Mumbai.

3. Special Inspector General
of Police, Nashik

4. Superintendent of Police,
Ahmednagar.

5. Anand Bhoite
Age : 45 Years, Occ. Service,
Deputy Superintendent of Police
Ahmednagar, now transferred at
Shirdi Devasthan Police Station,
Shirdi Tq. Tahata Dist. Ahmednagar

6. Shashiraj Patole,
Police Inspector
Local Crime Branch Ahmednagar,
at present posted at Kolhapur

7. Tukaram Radhakishan Kadam,
Age : 60 Years, Occ. Retire
R/o. Gad Manjarsumbha Tq., and
District Ahmednagar

8. Ravindra Pande,
Age : 40 years, Occ. Service,
As police constable in office
of Deputy Superintendent of Police
Office, Ahmednagar.
9. Ashok Nikam,
Age : 48 years, Occ. Service,
Police Constable Police
Station, Nighoj Tq. Parner,
District Ahmednagar
10. Shivaji Kawade,
Age : 33 years, Occ. Service,
Police Constable Police Station,
Nighoj Tq. Parner,
District Ahmednagar.

... RESPONDENTS

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Advocate for the Applicants : Mr. N.S. Ghanekar
A.PP for respondents : Mr. D.R. Kale

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**CORAM :T.V. NALWADE AND
K.K. SONAWANE ,JJ.**

DATE : 17th JULY, 2019.

JUDGMENT(PER T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The present proceeding is filed for giving direction to the respondents to see that the crime is registered against at least respondent No.5 as he created false record of police statement under Section 161 of the Code of Criminal Procedure. There were two witnesses who were not available on the date when the statements are shown to be recorded. One witness was dead and another witness was

out of country. In view of these circumstances, the statements of these two witnesses could not have been recorded, but the statements were shown to be recorded on those dates. Those statements were mentioned in the list of witnesses produced along with charge sheet in the Court. However, subsequently it was submitted by the prosecution that due to oversight, those statements were shown in the list, but they were not actually recorded.

3. The aforesaid two statements were recorded against the present petitioners. They were recorded for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B read with Section 109 of the Indian Penal Code and also for the offence punishable under Section 25 read with Sections 3 and 4 of the Arms Act and charge sheet is also filed in the said case.

4. The learned A.P.P submitted that due to present system of using computer, probably copy-paste method was used and due to that, the record of statements of two witnesses was created. This submission is not at all acceptable. Firstly, the police officer, who records statement under Section 161 of the Code of Criminal Procedure is expected to verify the identity of the person who comes before him for giving statement and then only he can record the statement. Initially, he makes entry about the enquiry in the case diary and then he creates record like statements for the purpose of Court use. The contention that due to use of computer and copy-paste method, which is used by the police,

probably that mistake was committed, is not acceptable. If that kind of approach is used by the police, that is also wrong. In respect of each and every witnesses, there should be verification of the identity of the witness and only after that, the statement of witness needs to be recorded.

5. The incident of aforesaid nature cannot be taken lightly. If no check is put to such instances, more instances will be there. It is a matter of liberty of the person. At every stage, the Court goes through the record of investigation to ascertain the nature of material collected against the accused. Even if the prosecution does not examine some witnesses, the Court if finds it necessary, can call the witnesses and examine those witnesses. This power of the Court is always in the mind of the Court even at the time of consideration of bail application. For all these reasons, this Court holds that some action needs to be taken against the erring police officer who created such record.

6. Learned A.P.P submitted that against the writer departmental enquiry was held and one increment of the writer was already stopped for one year. That is minor penalty. This Court is surprised to hear that in such serious case, the said person was left with minor penalty. It can be said that he is scape goat. The learned A.P.P submitted that against respondent No.5 also, departmental enquiry is going on. In view of the aforesaid approach of the superior officers, this Court feels that the same

thing will happen if at all some disciplinary action is taken against respondent No.5 for aforesaid conduct. That is not only misconduct, but that is apparently offence punishable under Section 167 of the Indian Penal Code. It is cognizable offence. In view of these circumstances, this Court holds that there is no other alternative than to see that the criminal action is taken against the respondent No.5. The department has found that the aforesaid thing did happen and it is also admitted. The fault is also admitted even before the Court. In view of these circumstances, no more enquiry is necessary and straightway report needs to be given by the department against respondent No.5 for registration of the crime. In the result, following order :-

ORDER

1. Petition is allowed.
2. Direction is hereby given to the respondents to see that report is given in respect of aforesaid action of respondent No.5 for registration of the crime for the offence punishable under Section 167 of the Indian Penal Code and for other offences which the department may find that they are also committed.
3. Rule made absolute in above terms.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE