

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1121 OF 2017

Dr. Pramod Eknathrao Jadhav,
Age 53 years, Occu. Medical Practitioner,
R/o Samarth Heritage, Khadkeshwar,
Aurangabad, District Aurangabad. ... **Petitioner**

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Department of Home Affairs,
Mantralaya, Mumbai – 400 032.
2. The Commissioner of Police,
Aurangabad City, Aurangabad.
3. The Assistant Director of Public Prosecution,
Aurangabad Region, Aurangabad,
1st Floor, Old High Court Building,
Adalat Road, Aurangabad.
4. The Investigation Officer,
CIDCO Police Station, Aurangabad,
District Aurangabad.
5. Ashok S/o Ganesh Rege,
Age 74 years, Occu. Medical Practitioner,
R/o Pushpa Nagri, Aurangabad.
6. Kamalkishor S/o Nanasaheb Kadam,
Age 71 years, Occu. Business,
R/o 12, Bhagya Nagar, Nanded,
Tq. and District Nanded. ... **Respondents**

WITH

CRIMINAL WRIT PETITION NO.1129 OF 2017

Miss Archana D/o Devidasrao Lathkar,
Age 45 years, Occu. Service as
Assistant Public Prosecutor,
R/o House No.5-15-98/9, "Kusum Kunj",
Behind Kotla Colony, Near Shani Mandir,
Aurangabad, Maharashtra State. ... **Petitioner**

Versus

1. The State of Maharashtra,
Through Secretary Home Department,
Mantralaya, Maharashtra State,
Mumbai.

(Respondent Nos.2 to 4 - deleted) ... **Respondents**

...
Mr. B.L.Sagar Killarikar & Mr. B.R.Kedar, Advocates for
Petitioners.
Mr. A.B.Girase, PP for Respondents-State.
Mr. R.N.Dhorde h/f Mr. V.S.Kadam, Advocate for
Respondent Nos.5 & 6.

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 18.03.2019

JUDGMENT : (Per T.V.Nalawade, J.) :-

These are the Writ Petitions arising from the same
proceeding bearing Regular Criminal Case No.1585 of
2000 pending on the file of the learned Judicial

Magistrate First Class, Aurangabad. Therefore both these Writ Petitions are being disposed of by this common judgment.

2. Heard. Rule in both the Writ Petitions. The learned APP and the learned advocate for the other respondents waive service of the Rule. With the consent of both the sides both the proceedings are heard finally at the stage of admission.

3. The petitioner in Criminal Writ Petition No.1121 of 2017 is the informant who had set the criminal law in motion by lodging FIR on 20.01.2000. He alleged that he was duly selected as an Associate Professor of E.N.T. Department in an interview hold on 28.06.1998 by the Selection Committee which was duly constituted. He alleged, however, that the respondent Nos.5 and 6 in that Writ Petition indulged in preparing and fabricating a false record showing that no candidate was selected for that post in the Mahatma Gandhi Mission's Medical College and Hospital, Aurangabad. Accordingly, Crime No.I-15 of 2000 was registered with CIDCO Police

Station for the offences punishable under Section 420, 468, 120-B read with Section 34 of the Indian Penal Code. The investigation commenced and culminated in filing of a charge-sheet and accordingly the criminal case is pending before the learned Magistrate.

4. The petitioner-informant filed Criminal Miscellaneous Application No.1781 of 2016 before the Chief Judicial Magistrate, Aurangabad for transferring the case to some other Magistrate inter alia on the ground that he had lost faith in the Magistrate. Respondent Nos.5 and 6 contested the Petition and by the order dated 11.07.2017 the learned Chief Judicial Magistrate dismissed the Criminal Miscellaneous Application No.1781 of 2016.

5. In the mean time, the Investigating officer through the learned APP filed an application before the Magistrate seeking permission to carry out additional investigation as contemplated under Section 173(8) of the Cr.P.C. dated 29.05.2017.

6. It further transpires that the learned APP who was conducting the trial submitted an application (Exh.128) on 26.07.2017 alleging that in the list of documents submitted by the Investigating Officer along with the charge-sheet, some of the documents at Serial Nos.9, 11 and 12 containing total 15 pages which included a report of a hand writing expert were missing from the Court record and requested the Magistrate to hold an inquiry into it and to take appropriate steps for securing the record. The learned Magistrate by the order dated 28.07.2017 rejected the request by observing that the application was moved by the learned Prosecutor without verifying the facts from the Investigating Officer. He also concluded that the copies of the documents which were supplied to the accused in compliance of Section 207 of the Cr.P.C. were available with the record of the Court and no document was in fact missing. By analyzing the fact situation the learned Magistrate rejected the application however directed a notice to be issued to the learned Prosecutor for contempt and also imposed a costs of Rs.500/- for inspecting record of the

Court without permission.

7. The informant has therefore, preferred Criminal Writ Petition No.1121 of 2017 praying that the learned Magistrate may be directed to decide the application submitted by the Prosecution / Investigating Officer on 29.05.2017 within stipulated time. He also seeks a direction to quash and set aside the order dated 28.07.2017 rejecting the application (Exh.128). He also sought a direction to quash and set aside the order passed by the learned Chief Judicial Magistrate in Criminal Miscellaneous Application No.1781 of 2016 dated 11.07.2017 rejecting his request to transfer the trial.

8. The learned APP from the trial court has filed Criminal Writ petition No.1129 of 2017 being aggrieved and dissatisfied by the order passed by the learned Magistrate dated 28.07.2017 on her application (Exh.128) to the extent it directs a notice of contempt to be issued to her and imposition of costs.

9. We have considered the submissions of both the

sides and perused the record. Both the sides agree to the fact that since after rejection of the transfer petition filed by the informant-petitioner and since after the rejection of the application preferred by the Prosecutor (Exh.128), the Magistrate as well as the Prosecutor have changed. Therefore the prayer of the informant seeking to challenge the order passed by the learned Chief Judicial Magistrate rejecting his Transfer Petition has become infructuous.

10. As far as the prayer being made by the informant-petitioner seeking a direction to the Trial Court to decide the application preferred by the Investigating officer / Prosecution seeking permission to carry out further investigation under Section 173(8) of the Cr.P.C. is concerned, in our considered view, the request is rather innocuous. The FIR was lodged way back in the year 2000 and still, inspite of direction of this Court to expedite the hearing, the trial has not commenced with the expected zeal. Therefore, the Magistrate needs to be directed to decide the application under Section 173(8) of the Cr.P.C. as expeditiously as possible.

11. Now coming to the Writ Petition No.1129 of 2017, the learned APP had submitted the application (Exh.128) pointing out that some papers from the list of documents filed along with the charge-sheet were missing. She had given certain reasons to arrive at such a conclusion and had requested the Magistrate to initiate an inquiry. In our considered view, prima facie no inference is deducible muchless to jump to a conclusion that this step by the learned APP was prompted by some ulterior motive. Being an officer of the Court if she had thought that the documents were missing, no fault can be found in her submitting the application adverting attention of the Magistrate.

12. In the same application another request was made to hold an inquiry into the incident of some fabrication in the list of documents submitted along with the charge-sheet wherein at couple of places whitener was apparently applied against the name of one of the accused and a direction was solicited to inquire into even that aspect. After considering the material, we are

of the considered view that the learned Magistrate for cogent and plausible reason has rejected the application (Exh.128), thereby refusing to initiate any inquiry into the alleged missing of papers or the alleged manipulation in the form of applying whitener. In doing so, the learned Magistrate has meticulously laboured to point out that in fact whatever documents were produced with the list of documents were very well available on the record including all the papers sent to the hand writing expert along with a letter of Dr. Bhopale. Therefore, we do not see any sufficient and cogent reason to interfere with the part of the order rejecting the request to inquire into all these allegations.

13. However, the learned Magistrate seems to have swayed by the conduct of the learned Prosecutor in referring to the record without his permission. Perhaps in her anxiety the learned Prosecutor must have inspected the record and had submitted the application (Exh.128) referred to herein above. Assuming for the sake of the arguments that she ought to have but had not solicited any permission from the Magistrate, still we

are of the considered view that such a conduct *ipso facto* was not intended to undermine authority of the Court or to disregard the procedure. The learned Magistrate seems to have enthusiastically directed the contempt notice to be issued to her and simultaneously imposed some costs which step according to us is de hors the provisions of law. If at all the Magistrate was intending to initiate a contempt proceeding, imposing such costs even before such a proceeding culminates is rather premature and does not stand to either the reason or law.

14. Under all these circumstances, both the Writ Petitions deserve to be partly allowed and are accordingly allowed in part.

15. The learned Judicial Magistrate First Class is directed to see that the application filed by the Investigating Officer / Prosecution for further investigation dated 29.05.2017 is decided within one month from the date of this order.

16. The impugned order passed by the learned

Magistrate on the application (Exh.128) filed by the learned APP / Petitioner in Criminal Writ Petition No.1129 of 2017 to the extent of directing a notice to be issued to her for contempt and imposing costs is quashed and set aside. However, the other part of the order refusing to make any inquiry into the alleged tampering of the record is not disturbed.

17. The rule is accordingly made absolute in above terms.

18. The interim relief shall stand vacated.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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vmk/-