

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

CRIMINAL WRIT PETITION NO.1297 OF 2016

Sangamnath s/o Revanappa Satanure,
Age : - 40 years, Occu. Service,
R/o. Parli, Tq. Parli, Dist. Beed.

... PETITIONER

VERSUS

- 1] The State of Maharashtra,
through : Police Station Ambajogai,
Tq. Ambajogai, Dist. Beed.

(Copy to be served on A.P.P.
High Court of Judicature of Bombay
Bench at Aurangabad)

- 2] Uttam s/o Pandurang Bade,
Age : 56 years, Occu. Headmaster,
Milind Vidyalaya, Parli (Vajinath),
Tq. Parli (Vajinath), Dist. Beed.

... RESPONDENTS
(Res. No.2-Ori. accused)

...

Advocate for Petitioner : Mr. R.L. Wakade and Mr. R.O. Awasarmol
Advocate for Respondent No. 1/State : Mr. B.V. Virdhe
Advocate for Respondent No. 2 : Mr. Satej S. Jadhav

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 03.09.2019

Pronounced on : 09.09.2019

JUDGMENT :

. Heard. Rule. The Rule is made returnable forthwith. Learned APP waives service for the respondent no.1. Learned advocate Mr. Jadhav waives service for the respondent no.2. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is the original complainant who had filed the private complaint before the Judicial Magistrate First Class for the offences punishable under Section 409, 420, 467, 468, 471, 474, 477(A) of the Indian Penal Code against three persons who would hereinafter be referred to as the accused no.1, accused no.2 and accused no.3. He alleged that the accused no.1 was the President of the Education Society running a school of which the accused no.2, who is the present respondent no.2, is the Headmaster and the accused no.3 is the Chartered Accountant/Auditor of the Society. In sum and substance the allegations were to the effect that the accused persons had indulged in forgery and misappropriated the Government grant. It is alleged that the same society used to run a hostel which was specifically reserved for the students from backward class. However, bogus record was created and students who were not belonging to the reserved category were certified to be so and were admitted in the hostel. Similarly, several purchases were made for the mess being run

by the hostel were in fact bogus and false. No such establishments were in existence from which the bills were produced to show that the purchases were made.

3. The learned Magistrate directed an investigation under Section 202 of the Code of Criminal Procedure by the police. The police submitted a positive report on 29.06.2006. Based on this the learned Magistrate directed the process to be issued for the aforementioned offences.

4. It is necessary to note at this juncture that the role attributed to the respondent no.2 who is the accused no.2 is to the effect that in spite being the Headmaster of the school and having access to the school record, in the Forms to be submitted by the students seeking admission to the hostel, he had falsely put an endorsement in spite of the fact that in the caste column a caste of reserved category was mentioned when the students were in fact not from that category.

5. All the three accused including the present respondent no.2 preferred separate revisions challenging the order of issuance of process. The revision preferred by the accused no.1 who is the Chairman of the Society was allowed but the Writ Petition preferred by the petitioner against that has been allowed by this Court. The

revision preferred by the accused no.3 was also allowed but apparently the petitioner has not preferred to challenge that order. The revision preferred by the respondent no.2 herein was allowed by the Additional Sessions Judge by the judgment and order which is impugned in this Writ Petition.

6. The learned advocate for the petitioner vehemently submitted that the respondent no. 2 being the Headmaster of the School ought not to have endorsed on the admission forms of the students which they had submitted for securing admission to the hostel, when those contained a false entries regarding their caste. He therefore has *prima facie* indulged in forgery on the basis of which the students who were not eligible took admission in the hostel. Thus there is a *prima facie* material revealing his involvement in commission of the crime. The learned Additional Sessions Judge has noticed this aspect but has lightly brushed it aside by observing that in the capacity of the Headmaster, he had simply certified that the student was studying in his school and he cannot be attributed with knowledge as to the contents of the admission forms. This being the stage for issuance of process, this much of material was sufficient to reveal complicity of the respondent no.2 in commission of the crime, more so when this Court has independently found substance to proceed against the Chairman of the Society who is the accused no.1.

7. The learned advocate for the petitioner also pointed out that independently, even the Social Welfare Department and the Chief Officer of the Zilla Parishad pursuant to an enquiry have found substance about such misappropriation and have withdrawn recognition of the hostel. He also adverted attention to the correspondence dated 10.04.2006, whereby, the Additional Chief Executive Officer of the Zilla Parishad addressed to the Education Officer (Secondary) has directed the action to be taken against the respondent no.2 who being the Headmaster had endorsed on the admission forms containing false entry regarding caste of the students. In view of such material, it would not be proper if the respondent no.2 is allowed to be set free without requiring him to face the charge.

8. The learned advocate for the respondent no.2 submitted that merely because the respondent no.2 has put an endorsement on the admission forms of the students for taking admission in the hostel, he cannot be attributed with the knowledge as to the contents of the forms and he was only certifying that those were the students of his school of which he was a Headmaster. There is no material to show that either independently or in collusion with the co-accused he had indulged in any kind of misappropriation. The petitioner was serving as a Teacher in the same school and the departmental action was initiated against him and to wreak vengeance he has filed the present

complaint involving even the respondent no.2. Lastly, the learned advocate would point out that instead of proceeding against the real culprits like Superintendent of the hostel and the students and their parents who had secured admission by furnishing false information, it would not be proper to allow the respondent no.2 to face the charge. The learned advocate would submit that in fact the respondent no.2 should have been made a witness.

9. The learned advocate submitted that there has been an enormous delay which has not been explained by the petitioner in challenging the impugned order which has been passed in the year 2008 by filing this Writ Petition in the year 2016. For this reason alone, the petition is liable to be dismissed.

10. I have carefully gone through the papers. As far as the allegations against the respondent no.2 are concerned, the copies of the admission forms clearly show that he had put endorsements thereon in his capacity as the Headmaster of the School which apparently reads that it is in the nature of the certificate that the individual was taking education in his school. At this juncture it would be a convenient plea to feign ignorance by him as to the contents of the admission forms which *prima facie* were not in consonance with the original school record to the extent of the caste of those students.

In my considered view, being the Headmaster of the School if he was putting an endorsement on these admission forms of the hostel being run by the same society, he cannot be said to have put such endorsement blindly. One can easily attribute to him knowledge as to the fact that the hostel was meant only for the students belonging to the reserved category and if the students were from the school of which he was a Headmaster, he cannot but be attributed with the knowledge of the contents of the admission form at least in respect of the category of the students. This much of material is *prima facie* sufficient to reveal his complicity in the alleged forgery. If and in what manner the respondent can be held to be responsible for the alleged misappropriation is a matter to be gone into during the trial. Taking into account the *modus operandi*, it cannot be said that it was a handy work of an individual or two. There must have been involvement of several persons and the Chairman of the Society has already been allowed by this Court to be prosecuted.

11. This much of material in my considered view was sufficient to dismiss the revision preferred by the respondent no.2. However, the learned Additional Sessions Judge, in spite of having noticed the role played by the respondent no.2 seems to have swayed away by the argument that he could not be attributed with the knowledge of the contents of the admission forms and that there was no material to

trace out that he was also involved in the alleged misappropriation. The observations are clearly perverse and arbitrary and cannot stand to reason.

12. True it is that the Writ Petition has been preferred after a lapse of few years of passing of the impugned order. However, simultaneously, it is to be noted that even the Chairman of the Society who is the accused no.1 had simultaneously preferred a revision which was also allowed and the order had reached this Court in the form of Writ Petition No.457/2013 which was decided by the order dated 01.12.2014. It is thus apparent that it is not that the petitioner was not pursuing his remedies, albeit he could have but has not preferred the present writ petition promptly. When independently I have found that there is substance to proceed against the respondent no.2 and the order of issuance of process was rightly passed, when it is a matter involving the kind of offences likely misappropriation and forgery, such a delay deserves to be overlooked.

13. Apart from the aforementioned aspect it is also pertinent to note that it is not that the police have made some lopsided inquiry under Section 202 of the Code of Criminal Procedure. In addition, independently, the Social Welfare Department and the Zilla Parashid have also conducted some inquiry and not only that but even

recognition of the hostel has been withdrawn and even the Additional Chief Executive Officer of the Zilla Parishad has issued a letter to the Education Officer (Secondary) to initiate an action against the respondent no.2 for the same act for which he is now being charged.

14. The Writ Petition is therefore allowed. Impugned order passed by the learned Additional Sessions Judge is quashed and set aside and the one directing the process to be issued, passed by the learned JMFC is restored.

15. The Rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)