

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1497 OF 2018

Shri. Bajirao Baliram Patil
 Age: 43 years, Occu: In Charge Head Master,
 R/o. Plot No.25, Gopal Nagar,
 Dhule Road, Nandurbar. ... **Petitioner**

Vs.

1. The State of Maharashtra
2. Shri. Ramesh Baburao Sonawane
 Age: Major, Occu: Nil,
 R/o. Maji Sainik Colony,
 Biladi Road, Dhule. ... **Respondents**

Mr. Shrikant S. Patil, Advocate for the Petitioner.
 Mr. S.P. Sonpawale, A.P.P. for the Respondent no.1-State.
 Mr. A.D. Khot, Advocate h/f. Mr. P.D. Bachate, Advocate for the
 Respondent no.2.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 15.02.2019
DATE OF PRONOUNCING THE JUDGMENT : 19.03.2019

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JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned
 A.P.P. waives service for the respondent no.1. Learned advocate Mr.
 A.D. Khot h/f. P.D. Bachate 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. In this petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure is praying for quashing and setting aside of the order of issuance of process for the offences punishable under Sections 406, 409, 420, 465 and 471 of the Indian Penal Code passed by the learned Judicial Magistrate First Class, Nandurbar in Criminal Misc. Application No.132 of 2015 dated 04.04.2018 and the order confirming it passed by the learned Sessions Judge, Nandurbar in Criminal Revision Application No.07 of 2018 dated 15.10.2018.

3. The respondent no.2 filed a private complaint under Section 200 of the Code of Criminal Procedure against the petitioner alleging that the former was the Chairman of an education society which was running a school for mentally challenged children. The petitioner was the Headmaster of the school. It was alleged that in connivance with the concerned Social Welfare Officer of Nandurbar the petitioner indulged in forgery and without seeking prior approval from the education society lodged false salary bills claiming benefit of the State Government Resolution dated 06.08.2002 and claimed one step promotion for himself and other staff members of the school and misappropriated government money, when he knew that the said Government Resolution was not applicable to him and the other staff members.

4. In fact the respondent no.2 sought a direction under Section 156 (3) of the Code of Criminal Procedure to police to carry out the investigation. By the order dated 28.12.2015 the learned Chief Judicial Magistrate refused to issue any direction under Section 156 (3) of the Code of Criminal Procedure but instead directed the respondent no.2 to record his statement under verification and to lead evidence for issuing process and to submit a list of witnesses. Obviously he postponed to issue the process in exercise of the powers under Section 202 of the Code of Criminal Procedure. It appears that thereafter a statement under verification was recorded and by the order dated 04.02.2016 the learned Chief Judicial Magistrate directed the concerned Officer in-charge of the police station to conduct an enquiry under Sub-section 1 of Section 202 of the Code of Criminal Procedure.

5. Accordingly, the concerned Officer in-charge of the police station conducted an enquiry. He recorded the statement of the petitioner as well as the respondent no.2, collected the documents from the office of the Assistant Charity Commissioner. Solicited some information from the Social Welfare Officer and submitted a report dated 25.07.2016 to the Chief Judicial Magistrate. It was informed that pursuant to the enquiry it was revealed that there was a dispute in the Management of the education society. The powers of the respondent no.2 to deal with the financial affairs of the education society were

withdrawn and the dispute was pending with the office of the Charity Commissioner in that respect. Financial powers of the respondent no.2 were withdrawn by the Social Welfare Officer of Zilla Parishad, Nandurbar and those were conferred upon the petitioner who was the Head Master. It was further reported that in his capacity as a Headmaster of the school the petitioner had submitted the salary bills claiming benefit of the one step promotion in accordance with the Government Resolution dated 06.08.2002 and the bills were duly approved by the Social Welfare Officer of Zilla Parishad and accordingly the payments were made. There was no element of cheating and no crime was revealed.

6. The learned Magistrate by the impugned order refuted the conclusion of the report. He also concluded that though the petitioner was a public servant sanction to prosecute him under Section 197 of the Code of Criminal Procedure was not necessary at that stage of the proceeding and directed the process to be issued as mentioned herein-above.

7. The petitioner preferred a revision under Section 397 of the Code of Criminal Procedure bearing Criminal Revision Application No.07 of 2018 but it was dismissed by the impugned order by the learned Sessions Judge, Nandurbar. Hence this writ petition.

8. The learned advocate for the petitioner at the outset

vehemently submitted that there was no sufficient and cogent reason for the learned Magistrate to discard the report of the enquiry submitted by the concerned Officer In-charge of the police station pursuant to a direction under Sub-section 1 of Section 202. He would further submit that in fact the petitioner in bona fide discharge of his official duties, as a Headmaster of the school, had prepared the salary bills claiming benefit of the Government Resolution to the employees working in naxalite and tribal areas. The pay was accordingly fixed. An order to that effect was passed on 13.03.2014. Entries were duly recorded in the service book of all the employees of the school and the Social Welfare Officer has also granted necessary approval and the salary bills were accordingly passed. There was no necessity for seeking any approval of the education society which was running the school and it was the part of the duty of the petitioner as the Headmaster to forward the salary bills. It is only pursuant to the Audit by Pay and Pension Unit that it was reported that the petitioner and the other employees were not entitled to the benefit of the Government Resolution and issued a direction to recover the excess amount paid to them with effect from 18.04.2004. The petitioner and other staff members being aggrieved have preferred Writ Petition No.9857 of 2017 in this Court which is pending. Thus there was no element of criminality involved. But the two Courts below have clearly overlooked all the aforementioned aspects.

9. The learned advocate for the petitioner further submitted

that the petitioner being a public servant, no cognizance could have been taken by the learned Magistrate without there being any sanction under Section 197 of the Code of Criminal Procedure. However, this important aspect was also overlooked by both the Courts below which has resulted in the petitioner being made to face the trial without necessary ingredients for constituting the offence being disclosed and although the alleged offence was committed in discharge of the official duties. The learned advocate in support of his submission referred to the decision in the case of **Anil Kumar & Ors. V/s. M.K. Aiyappa & Anr.; 2013 C.J. (SC) 2123, Amal Kumar Jha V/s. State of Chhattisgarh and Anr.; AIR 2016 SUPREME COURT 2082 and Pandharinath Narayan Patil and Ors. V/s. State of Maharashtra and Anr.; 2016 Cr.L.J. 146.**

10. The learned A.P.P. and the learned advocate for the respondent no.2 referring to the affidavit-in-reply of the respondent no.2 submitted that the petitioner even on his own saying had submitted salary bills claiming benefit of the Government Resolution which was not applicable and thereby has derived the benefit since the year 2003 up to the year August 2018 and has clearly misappropriated the Government money in connivance with the Social Welfare Officer concerned. The petitioner knew that since the date of appointment he was posted in naxalite / tribal area and the benefit of the Government Resolution dated 06.08.2002 was available only to the employees who

were transferred from outside the tribal area in a place in the tribal area. In spite of such knowledge he has dishonestly drawn excess salary and has misappropriated Government money. They would further submit that since it is a matter of misappropriation, it cannot be said that the offence was committed in discharge of official duties which would require a sanction under Section 197 of the Code of Criminal Procedure.

11. As can be appreciated from the over all allegations being levelled against the petitioner, he is alleged to have indulged in misappropriation by resorting to cheating and forgery. The bone of contention is that he allowed a revision of pay in accordance with the Government Resolution dated 06.08.2002 on the pretext that it was applicable to him and the staff of his school which is functioning admittedly in a tribal area. It is pertinent to note that the Magistrate had resorted to an enquiry under Sub-section 1 of Section 202 of the Code of Criminal Procedure post cognizance. In turn, the police solicited a report from the Social Welfare Department by putting some objective queries and based on the replies a report was submitted to the Chief Judicial Magistrate with a conclusion that there was no crime committed.

12. Admittedly, the school was under the control of the Social Welfare Department of the State Government and obviously the salaries were being drawn with the approval of the Social Welfare Department.

Consequently, even the concerned Police Officer had received the reply dated 18.06.2016 which is annexed with his report submitted to the Chief Judicial Magistrate. Since all these papers submitted by the Police Officer concerned pursuant to an enquiry held by him under Sub-section 1 of Section 202 of the Code of Criminal Procedure, these documents can be regarded as documents of impeccable character and can be gone into by this Court.

13. A bare look at this reply dated 18.06.2016 by the Social Welfare Officer of the district reveals that the employees of the school of which the petitioner is the Headmaster were accorded approval for receiving the benefit of the Government Resolution for a step up promotional scale pursuant to the order passed by the Social Welfare Department.

14. It has further been informed that since the scheme promulgated by the Government Resolution is that of the State Government there was no necessity of there being any permission from the education society running the school. If such was the state of affairs, it is quite apparent that purely in his capacity as the Headmaster of the school, in discharge of his official function of drawing salary bills he has revised the pay scales of the employees pursuant to the Government Resolution with the approval of the Social Welfare Department by taking suitable entries in the service books and it is only thereafter that the

salaries were allowed to be drawn in the revised scale. It is equally important to note that even while revising the pay scales, necessary precaution has been taken to solicit option from each of the employees. The order issued by the Social Welfare Officer of the district dated 13.03.2014 clearly reveals that he had accorded approval for such extension of benefit to the employees of the school by passing a suitable order. The employees were directed to execute bonds for refund of the excess amount drawn if at all they were found not entitled to receive the benefit of the Government Resolution. In view of such state of affairs, I have no hesitation in concluding that merely by virtue of the petitioner submitting salary bills under the assumption that the Government Resolution is applicable to the employees of his school, the ingredients for constituting the offences of forgery, cheating or misappropriation cannot be made out.

15. Assuming for the sake of arguments that Government Resolution does not cover the employees of the petitioners school, still it would only be a matter of faulty interpretation of the Government Resolution by the petitioner and would fall short of giving rise to any criminality, particularly when even the Social Welfare Officer had granted approval for such fixation. Therefore, applying the principles laid down in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.**; AIR 1992 SUPREME COURT 604, *prima facie* the present case is squarely covered by categories 1, 3 and 7. Accepting the

allegations at their face value they do not make out all the ingredients for constituting the offences. It would be sheer misuse of the process of the Court if the petitioner is made to face the trial based on the allegations being levelled by the President of the education society running the school when the State Government authorities do not find any criminality in the action of the petitioner in revising the pay scales of the staff under a faulty interpretation of the Government Resolution.

16. Much was argued by both the sides to demonstrate as to whether, sanction under Section 197 of the Code of Criminal Procedure was necessary to prosecute the petitioner being a public servant. Since I have independently considered the factual aspects of the matter and have come to a conclusion that even on facts, the F.I.R. and the Crime are liable to be quashed and set aside, the question whether sanction under Section 197 of the Code of Criminal Procedure becomes academic and need not be gone into.

17. The writ petition is therefore deserves to be allowed and is accordingly allowed in terms of prayer clause '(a)'.

18. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)