

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

CRIMINAL WRIT PETITION NO. 76 OF 2020

Arun s/o Shriram Devare,
Age 40 years, Occu. Service,
at present nil,
R/o At Biladi, Post Nagaon,
Taluka and District Dhule

.. Petitioner

Versus

1. The Superintendent of Police,
Dhule, District Dhule
2. The Police Inspector,
Songir Police Station, Songir,
Taluka and District Dhule
3. Subhash s/o Sahebrao Patil,
President, Dwarkamai Sarvangin Vikas
Sanstha, Vishwanath,
Taluka and District Dhule
4. Chetana Subhash Patil,
Age major, Occu. Nil,
R/o Shri Guru Colony, Plot No.32,
Behind A.S.R. Patil High School,
Valvadi-Shivar, Deopur,
District Dhule
5. Kailas Jairam Suryawanshi,
Age major, Occu. Head Master,
Jai Jogeshwari Madhyamik Vidyalaya,
Vishwanath, Taluka and District Dhule
6. Education Officer (Secondary),
Zilla Parishad, Dhule, District Dhule

.. Respondents

Mr S.S Deshmukh, Advocate for petitioner
Mr M.M. Nerlikar, A.P.P. for respondents no.1, 2 and 6
Mr P.S. Paranjape, Advocate for respondents no.3 to 5

**CORAM : T.V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 26th June 2020

ORAL JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule returnable forthwith. With the consent of learned Counsel for both the sides, heard finally at admission stage.

2. The petitioner seeks issuance of writ of mandamus to register the crime against the persons involved in the incident of preparing forged and fraudulent approval to the services of respondent no.4 and getting the salary of that post.

3. The factual matrix giving rise to this petition is as under:

4. The respondents no. 3 to 5 are the persons alleged to have involved in preparing the forged documents in the shape of approval and thereby withdrawing the salary of respondent no. 4, for more than twelve years to enormous extent and thereby causing loss to the public exchequer. Respondents no.3 to 5, in order to ensure that respondent no.4 is appointed in place of petitioner as Drawing Teacher, terminated the services of the petitioner even though the claim of reinstatement of the petitioner is upheld by the School Tribunal and endorsed upto the Honourable Apex Court, did not comply with the order of reinstatement with backwages and contempt proceeding is pending before this Court. Apart from withdrawing the salary of respondent no. 4, respondents no. 3 to 5, in connivance and to confer the benefit in the shape of salary from public exchequer have gone to the extent of preparing the forged and fraudulent approval to the services of respondent no.4, who is daughter of respondent no.3, who happened to be President of the Trust, whereas respondent no. 5 is the Head Master of the school and instrumental in the entire process in the manipulation of record of approval. On the basis of fraudulent approval, respondent no.4 has alleged to have withdrawn the salary from 12.7.2006 to June 2018 vis-a-vis from March, 2019 to May, 2019.

5. The fact of fraudulent approval to the services of respondent no. 4 has been reflected in the affidavit filed by the Deputy Education Officer (Secondary), Zilla Parishad, Dhule in Writ Petition No. 6754 of 2016. This Court has dismissed the petition filed by respondent no.4 challenging the order of revocation of approval. There was round of litigation earlier regarding registration of crime against the respondents by way of Criminal Writ Petition

No. 1502 of 2017, wherein a statement was made that, upon enquiry conducted in the allegations made by the petitioner, the Investigating Officer found that approval granted for appointment of respondent no. 4 is genuine and as such, there is no substance in the allegations. While accepting the said statement, this Court granted liberty to the petitioner to take legal steps which are available. In order to point out the incorrect statement, the petitioner had taken out Criminal Application no. 1502 of 2017 which has been withdrawn.

6. The Education Officer, Zilla Parishad, Dhule, by communication dated 10.8.2018 called upon respondent no. 5 stating that approval to the services of respondent no.4 is bogus and on the strength of bogus approval, the salary of respondent no. 4 has been withdrawn from 12.6.2006 to June 2018 and thereby caused loss to the Government. The Head Master and the Trust have deceived the Government and directed to deposit the amount within a period of seven days; failing which they have to face appropriate action. By way of another step, the Education Officer, by his letter dated 7.1.2019, called upon the explanation as to why criminal offence under Section 420 of the Indian Penal Code should not be lodged against respondents no. 3 to 5, for causing loss to the Government.

7. In the above premise, the petitioner lodged complaint on 29.8.2019 with respondent no. 2/Police Inspector, Songir Police Station, Dhule. Later on, one more complaint came to be filed on 12.12.2019 pointing out commission of cognizable offences attributed against respondents no. 3 to 5 and causing loss to the public exchequer to enormous extent, as the salary has been withdrawn from 12.6.2006 to June 2018 vis-a-vis March 2019 to May 2019, which comes to appropriately Rs.50 lakhs.

8. It is contended that the above referred communications established the fact of commission of fraud, forgery, mischief and misappropriation of public

money and thereby making out cognizable offences contemplated under Section 154 of the Code of Criminal Procedure. However, respondent no. 2 did not register the F.I.R. and made communication dated 16.10.2019 stating that said matter is concerned with the Education Department. According to the petitioner, the cognizable offences punishable under Sections 406, 408, 420, 466, 472, 120-B of the Indian Penal Code are prima facie made out. Even then, respondent no.2/Police Inspector of Songir Police Station yet not registered the crime against the concerned persons and sought directions in this Writ Petition.

9. Heard Mr S.S Deshmukh, Counsel for petitioner, Mr M.M. Nerlikar, A.P.P. for respondents no.1, 2 and 6 and Mr P.S. Paranjape, learned Counsel for respondents no.3 to 5.

10. Perused the papers annexed with the petition and various communications and complaints lodged by the petitioner dated 29.8.2019 and 12.12.2019 with Songir Police Station.

11. Mr S.S. Deshmukh, learned Counsel for the petitioner submitted that when cognizable offences are prima facie disclosed on the basis of allegations made in the complaint, in view of Section 154 (1) of the Code of Criminal Procedure, it is mandatory on the part of Police Officer to register the F.I.R.. Mr Deshmukh submitted that respondent no.2 has not at all responded in spite of persuasion and follow up by the petitioner, in view of complaints dated 29.8.2019 and 12.12.2019 lodged by him. Mr Deshmukh invited our attention to the citation of the Honourable Supreme Court in case of **Lalita Kumari v. Govt. of U.P. and Ors.**, reported in **2014 CRI. L.J. 470**. By placing reliance on the ratio laid down in case of **Lalita Kumari** (supra), Mr Deshmukh sought directions against the Police officials for registration of crime on the basis of complaints lodged by the petitioner.

12. Mr M.M. Nerlikar, learned A.P.P. for respondents no. 1, 2 and 6 and Mr P.S. Paranjape, learned Counsel for respondents no. 3 to 5 opposed to allow this petition by inviting our attention to the various communications placed on record.

13. We have considered the submissions made by the learned Counsel for both the sides.

14. The Constitution Bench of the Supreme Court in case of **Lalita Kumari Vs. Govt. of U.P. and ors.** (supra), held as under :

" Registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Supreme Court issued the following Guidelines regarding the registration of FIR.

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, directed that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law. The plea that if despite the fact that the police officer is not prima facie satisfied, as regards commission of a cognizable offence and proceeds to register an FIR and carries out an investigation, it would result in putting the liberty of a citizen in jeopardy and therefore, police must have liberty to hold preliminary inquiry before registration of FIR goes against the very language of S.154. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer - in-charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 about the commission of a cognizable offence must be registered."

15. Therefore, it is obligatory on the part of Police Officer to register F.I.R. when cognizable offences are made out in the complaint. The Police Officer cannot refuse to register F.I.R. by pointing out that some enquiry is going on in another department on the same set of allegations.

16. Having regard to the legal position made clear by the **Honourable Supreme Court in case of Lalita Kumari** (supra), if allegations made in the

complaints lodged by the petitioner dated 29.8.2019 and 12.12.2019 with Police Inspector, Songir Police Station, District Dhule are considered, prima facie cognizable offences do attract. It is a case of preparation of forged documents, fraud and causing loss of huge amount of public money. The Police Officer cannot refuse to register the F.I.R. At the stage of registration of crime, or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the Police Officer concerned cannot embark upon an enquiry as to whether the information given by the informant is reliable or genuine or otherwise and refuse to register F.I.R. on the ground that information is not reliable or credible. On the other hand, the Officer in-charge of a Police Station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof.

17. Having regard to the above reasons and discussions, we arrive at a conclusion that prayer of petitioner for issuance of mandamus for registration of crime against the concerned persons needs to be allowed when it is a case of loss of huge amount of Government money on the basis of forged documents.

18. Resultantly, we allow the Writ Petition and direct respondents no. 1 and 2 to register the crime in respect of the incident of forged and fraudulent approval of teacher and getting salary of that post.

19. It is open for the Police Officer to file charge-sheet, if necessary against all the persons who are involved in preparing forged and fraudulent

record and misappropriation of government money.

20. Rule is made absolute in above terms. No order as to costs.

(SHRIKANT D. KULKARNI, J.)

(T.V. NALAWADE, J.)

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