

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1257 OF 2018

1. Govind S/o Chandu Rathod,
Age. 70 years, Occ. Agril.
2. Seva S/o Reva Rathod,
Age. 80 years, Occ. Agril.
3. Gulab S/o Balchandra Rathod,
Age. 65 years, Occ. Agril.
4. Shantabai W/o Govind Rathod,
Age. 59 years, Occ. Household,
5. Kundan S/o Govind Rathod,
Age. 43 years, Occ. Service,
6. Gangaram S/o Chatru Rathod,
Age. 55 years, Occ. Agril.,
7. Sakharam S/o Baliram Kulkarni,
Age. 56 years, Occ. Service,
8. Namdeo S/o Sakharam Kangane,
Age. 55 years, Occ. Service,

All R/o Rathod Nagar, Shivni Tanda,
Sevli, Tq. & Dist. Jalna.

... **APPLICANTS**
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Sevli,
Tq. & Dist. Jalna.
2. Ranjeet S/o Kailash Rathod,
Age. 29 years, Occ. Agril,
R/o Rathod Nagar, Shivni Tanda,
Sevli, Tq. & Dist. Jalna.

... **RESPONDENTS**
(Respondent No.2 is Orig. Informant)

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Mr. Sudarshan J. Salunke, Advocate for Applicants.

Mr. R. D. Sanap, APP for Respondent No.1 / State.

Mr. N. V. Gaware, Advocate for Respondent No.2.

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CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 04th March, 2020.

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

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

2 The present proceeding is filed for relief of quashing of FIR No.28 of 2018, registered with Sevli Police Station, Tahsil and District Jalna, for the offences punishable under Sections 406, 409, 419, 420, 463, 464, 465, 467, 468, 471, 120-B read with 34 of the Indian Penal Code. Relief is claimed for quashing of case also, which is filed in this crime and which is given number as R.C.C. No.21 of 2020 and which is pending in the Court of learned Judicial Magistrate First Class, Mantha, District Jalna.

3 The report was given by Respondent No.2, Ranjeet Kailash Rathod. The grandfather of informant by name Fakira Chandu Rathod was real brother of Applicant No.1 Govind Chandu Rathod. Atleast till the year 2013, Fakira Rathod was the President of Marathwada Vasant Rao Naik Shikshan Prasarak Mandal, Shivni Tanda, District Jalna. At the relevant time, Applicant No.1 Govind Rathod was Secretary of the institution. Applicant No.2 Seva Rathod was the Deputy President and there were other members including Kundan Govind Rathod. It is contended that one Shantabai Govind Rathod was also member of the Managing Committee of the school. It is contended that there was power to the President to conduct the business of the institution, call meetings and in his absence the powers were with the Deputy President as per the constitution of the institution.

4 It is the contention of the informant that on 29th January, 2013, Fakira was alive but without giving intimation to him of anything, Govind Rathod and his son Kundan Rathod created the record to show that notice was given to the members of the Managing Committee on 20th January, 2013 and meeting was actually held on 29th January, 2013. It is contended that the meeting was shown to be called for considering the promotion of a teacher to the post of

headmaster and there was a proposal to promote aforesaid Kundan Rathod to the post of headmaster. It is contended that when Deputy President was available, Secretary Govind Rathod showed himself as President and one Shantabai Govind Rathod, who was not member and who was wife of Govind Rathod, was shown as a member of the Managing Committee and resolution was created to show that promotion was given to Kundan Rathod to the post of headmaster. It is contended that by using such bogus resolution, Kundan Rathod was appointed as headmaster and that way the Government money is misappropriated. This institution receives grant in aid.

5 It is the contention that by creating record of promotion in favour of Kundan Rathod, offences are committed by others like Gangaram Rathod, Sakharam Kulkarni and Namdeo Kangane and they had hatched conspiracy to create such record. It is contended that the grievance was raised with the department by Fakira, but no action was taken against the present Applicants. It is contended that subsequently, the membership of the informant and other permanent member like Vimal Rathod was cancelled. It is contended that in the meeting dated 21st May, 2013 Najabai Rathod was not present, but her presence is falsely shown and somebody has forged her thumb impression.

6 The aforesaid contentions themselves show that the present Applicants were in control of the management of the aforesaid institution. With the charge-sheet, there is relevant record. The charge-sheet contains one communication made by Fakira Rathod dated 29th June, 2013 and it shows that he had sought permission to fill the vacant post of headmaster. The school comes under the social welfare department of the Government. There is another communication dated 16th December, 2015 shown to be made by Fakira and in that communication, he had informed that without taking the subject on agenda and without verifying the seniority, Kundan Rathod was appointed on the post of headmaster by giving him promotion. He had requested for making inquiry and to give appointment to the person as per the seniority and who was satisfying eligibility conditions. However, it is not the contention of the informant that Kundan Rathod was not satisfying the eligibility conditions. On the contrary, the submissions made show that appointment of Kundan Rathod, who is also a close relative of the informant, was made during the period when Fakira was having control over the institution.

7 The submission was made that even when many letters were given to social welfare department, no inquiry was made into the

aforesaid allegations and so the report was given. When the appointment was made in the year 2013, FIR came to be given on 5th March, 2018. There is a record in respect of elections, which were held in the year 2008 and that record, photocopy shows that including Shantabai Govind Rathod all the Applicants and even the informant were shown as members of the aforesaid institution. The Managing Committee consisted of seven members. There is a record like photocopies of notices for calling the meeting of the Managing Committee on 14th July, 2012, 29th January, 2013, 14th May, 2013 and 19th September, 2013 and there is also record of photocopy of notice given for calling General Body on 21st May, 2013. The notice of meeting by which meeting was called on 29th January, 2013, bears the signature of Fakira and the aforesaid contentions made by Fakira in the representations show that he was present when decision was taken to call the meeting on 29th January, 2013. Then there are notice of subsequent date like 19th September, 2013, which also bears the signature of Fakira. Copy of resolution passed by the Managing Committee in the meeting dated 29th January, 2013 shows that in notice, subject of making appointment of new headmaster was to be taken by the Managing Committee for consideration and in the meeting resolution was passed that as the previous headmaster was to retire on 31st January, 2013, in his place Kundan Rathod was to be

appointed. This resolution was passed unanimously. When there were seven members in the Managing Committee, persons like Seva Rathod, Govind Rathod, Gulab Rathod, Kundan Rathod and Shantabai Rathod were shown as present for the meeting. The persons, who proposed the resolution and who seconded the resolution, signed on the minutes to show that such proposal was made and the proposal was seconded. It is true that these minutes do not show the presence of Fakira, but in view of the circumstance that notice was there to Fakira and in previous meeting this date was fixed, in proceeding like present one, not much can be made out of this circumstance. Considering the nature of grievance, which was raised by Fakira, which is mentioned above and other circumstances, it can be said that Fakira had lost control over the institution.

8 The father of informant was also not present in the meeting though he was entitled to remain present. Admittedly, this resolution was submitted to the authority for approval and the authority gave approval to the promotion to Kundan Rathod to the post of headmaster. The submissions made show that there were some teachers, who were senior to Kundan Rathod, but they had given in writing that they were not interested in taking the post of headmaster. Admittedly, promotion of Kundan Rathod to the post of

headmaster was not challenged by any teacher of that institution by filing appropriate proceeding before the authority. Only the aforesaid representations were made to the authority by Fakira. If the authority was not taking decision, then it was open to Fakira to come to this Court for seeking appropriate relief, but during his lifetime he did not turn up. Even the father of informant did not file any proceeding in this Court and after about five years, informant gave report to police. All these circumstances show that there is no force in the allegations that the signatures are forged or false record is created by the Applicants of meeting dated 29th January, 2013. If there was dispute with regard to working of the institution or taking over the Management by the Applicants illegally, the dispute ought to have been raised before the proper authority but that is not done. To void to challenge the authority of the Applicants to manage the institution by filing proceeding before proper authority, report is given to police and that way the informant is trying to pressurize the Applicants. When the appointment of Kundan Rathod is approved by the authority and there is nothing illegal in it, on the basis of aforesaid allegations, it cannot be said that any offence is committed by the present Applicants. It will be abuse of process of law if the Applicants are directed to face the trial for aforesaid offences.

9 The learned counsel for informant produced on record a copy of order made by this Court in Criminal Application No.1230 of 2017, (*Govind Chandu Rathod and another Vs. The State of Maharashtra and another*). He submitted that when for getting relief in respect of other crime proceeding was filed in this Court, this Court did not grant relief and the application was withdrawn. The facts of that matter were different and there were allegations that another account was opened when there was account of the institution and amount of the institution, which was coming from the Government was diverted to that account and there was allegations that the said amount was misappropriated. That incident was considered separately by this Court, but only on the basis of that incident, inference cannot be drawn in the present matter that in the present matter also offence is committed by the Applicants.

10 The learned counsel for informant placed reliance on some observations made by the Apex Court in the cases reported as 2001 (2) SCC 17, (*Lalmuni Devi Vs. State of Bihar*) and 2019 ALL.M.R.(Cri) 1702, (*Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others*). The facts of those cases were different. The Apex Court has laid down that only because the dispute is of civil

nature, Court cannot quash the FIR, if on the basis of the same facts it can be said that the offence is committed. There cannot be dispute over this proposition. The relevant facts of the present matter are quoted by this Court and this Court has come to the conclusion that continuation of criminal proceeding will be abuse of process of law. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clauses (C), (C-1) and (C-2).
- III. Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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