

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

CRIMINAL WRIT PETITION NO.1226 OF 2018

Devyani D/o Govind Ambilwade
Age: 27 Yrs., occu. Service,
R/o Bhajan Galli, Babu Genu Road,
Parbhani, Dist. Parbhani

**= PETITIONER
(orig.Complainant)**

VERSUS

1) The State of Maharashtra
Through its Secretary
Home Department,
Mantralaya, Mumbai-32.

2) Vasant Ganpat Pekhale,
Age: 68 Yrs., occu. Notary
2, Parag Apartment,
Syadri Building, Shahupet,
Nasik Raod, Nashik.

3) Rajendra Ramgir Gosavi,
Age: 58 Yrs., ocu. Service,
R/o 210, DGP Nagar, No.2,
Nashik.

**= RESPONDENT
(Resp.Nos.2 & 3
are original
Accused Nos.14 & 15)**

Mr. SS Halkude, Advocate for Petitioner;

Mrs.PV Diggikar, APP for Respondent No.1-State

Mr.Mayur Salunke, Adv. h/for Mr. VD Salunke,
Advocate for Respondent No.2;

Mr. AV Hon, Advocate for Respondent No.3.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 13th December, 2019

PRONOUNCED ON : 05th MARCH, 2020

JUDGMENT

1) Present petition has been filed by the original informant for challenging the order passed by learned Ad-hoc Additional Sessions Judge-1, Parbhani below Ex.31 in S.T. No.112 of 2013 on 13-02-2018; thereby allowing the discharge application under Section 227 of Code of Criminal Procedure filed by original accused No.14 and 15, i.e. present respondent No.2 and 3.

2) Present petitioner has filed First Information Report (FIR) on 15-01-2013 with Nanalpeth Police Station, Parbhani vide Cr. No.11 of 2013; alleging that the accused persons have committed offence punishable under Section 466, 366, 468, 469, 471, 500, 501, 506, 511 and 34 of Indian Penal Code. It was contended by the informant in her FIR that she had taken admission in Dnyanopasak Mahavidyalaya Parbhani for M.Com. course. Prior to that she has completed her B.Com. from Pune. She was residing with her father at Bhajangalli, Parbhani. Accused No.8 is the husband

of her maternal aunt who resides at Nasik and carries out bakery and leather item business. He has son by name Amol aged 28 years. He used to go to Pune for business on many occasions. He used to visit the hostel of the informant for giving delivery of tiffin given by his mother. Informant has no occasion to raise suspicion over him as he was her cousin. However, she could feel the difference in his behaviour about 1 to 1½ years prior to FIR. He used to get emotional while talking on phone and also used to make advances. She had given him understanding about the said behaviour. She had told about his conduct to her parents. When her parents raised the said issue with his parents, Amol had accepted his mistake and assured about good behaviour in future. The period of six months thereafter went smoothly. Thereafter, a year prior to FIR, there were talks about the marriage proposals of informant and there was approval from a groom from Nasik. When Amol got knowledge about the same, he went to the house of that groom and gave wrong information to them that there was love affair between him and informant. The said marriage could not take place. The

relatives of informant went to Nasik and gave understanding to Amol and his parents. Informant was about to lodge the report, but was prevented by the relatives.

3) The informant has further stated that Amol had tried to contact with her on phone after she started residing at Parbhani. She refused to talk to him. There was an attempt to abduct her by Amol and his friends, when she was returning from college. She came across her photo on the Parbhani edition of Daily Lokmat on 13-01-2013. The news was in respect of blessings to her on her marriage with Amol. A photograph was published wherein she was shown with Amol with garlands. It was an advertisement given by one Altaf Salim Shaikh. She as well as her family members were shocked by the said news. Many people came to greet her after reading the news. Her father and uncle made inquiry with Lokmat office and came to know that the said advertisement was given by their Nasik office for publishing it in Parbhani edition. The said office made her available certain documents from their Nasik office. Those documents were given to her on

14-01-2013. She was shocked to see those documents. There was a bond paper purchased in her name on which there was joint affidavit of herself and Amol stating that they have performed marriage at 12-35 p.m. on 24-04-2012 at Aurangabad road, Nasik. Name of the priest and witnesses were also mentioned. The said document was notarized with Notary - Vasant Pekhale. She says that the said affidavit is false. She had never gone to Nasik on 18-06-2012. She then collected the certificate of marriage from Nasik Municipal Corporation. It was realized that somebody had impersonated her and it was shown that she got married to Amol. All those documents have been fabricated and the photos were also got prepared by using photo-trick. The news regarding the marriage was published after about 8 months of alleged marriage and the said act has been done only to defame her and her family members. The news papers have also not verified the news and published it as given. Hence, FIR was filed.

4) After the investigation was completed, charge-sheet was filed against all the accused persons named in the FIR. Thereafter, accused No.

14 and 15 had appeared, they filed application under Section 227 of Code of Criminal Procedure for discharge. It was contended by them that accused No.14 is a legal practitioner since 30 years and has been appointed as Notary since 1997. The evidence collected is the affidavit notarized by him; wherein it was mentioned that the complainant has married to Amol. It was contended by the complainant that she never signed the document. However, he being Notary, is protected under Section 13 of the Notaries Act. No Court is allowed to take cognizance against him unless a complaint in writing is filed by the officer authorized by Central Government or State Government by general or special order in that respect. In this case, since no such complaint is filed by an authorized person, learned Magistrate ought not to have taken cognizance. When the prosecution against him is void, he can not be asked to face the trial. Accused No. 15 was Divisional Officer of Panchavati Division of Nasik Municipal Corporation. He was also the Marriage Registrar in respect of his division. He is a public servant. The facts against him are that he has issued the marriage certificate

without verifying the facts. Accused Amol had submitted application for registration of his marriage with complainant. He had verified documents filed with application and then registered the marriage. He had no idea that those documents were fabricated documents. He has done his duty and in view of Sections 17, 18 and 13 of Maharashtra Regulation of Marriage Bureau Act, 1998 he is protected from any criminal prosecution. He has stated that he can not be prosecuted except by Registrar General or an officer duly authorized by him. He was discharging his duty when he issued the marriage certificate and therefore he is also protected under Section 197 of Code of Criminal Procedure. They deserve to be discharged for want of mandatory requirements.

5) The application was objected by the prosecution on the ground that the accused persons have played active role. They were having knowledge about the false and fabricated documents prepared by accused Amol. It is not a fit case to discharge the accused, when evidence is available against them.

6) After considering the submissions on behalf of both sides, learned Ad-hoc Additional Sessions Judge, Parbhani has allowed the application Ex.31 and thereby discharged accused Nos.14 and 15. Hence, this petition by the original informant.

7) Heard learned Advocates and learned APP appearing for the respective parties

8) It has been vehemently submitted that the respondents/accused Nos.14 and 15 had played active role. Unless the affidavit would have been prepared by accused No.14, there would not have been a Certificate of Marriage. Both the accused persons had failed to adopt proper procedure. Accused No. 15, being a public servant, was suppose to adopt proper procedure for registration of a marriage. He has not adopted the said procedure. The signatures on the application, which were supposed to be made in presence of Registrar, are different than the real signatures of the informant. The opinion of the expert says that those signatures are different. The thumb impressions are also

different. Opinion of the expert supports this fact. Preparation of fabricated or false document can not be part of duty of a public officer and therefore, accused No.15 ought not to have been discharged. Protection of Sections 17, 18 and 13 of Maharashtra Regulation of Marriage Bureau Act, 1998 as well as Section 197 of Code of Criminal Procedure, is not available to him. Further, accused No.14 has taken active part. He has not taken identification of witnesses when affidavit was prepared. The documents were forged and without any precaution to ascertaining the genuineness of those documents, the affidavit was prepared by the Notary. The Government has cancelled his appointment as Notary by order dt.18-08-2018. The opinion of the handwriting expert and forensic laboratory would show that those documents are forged and the photographs have been prepared with trick photography. Some girl had impersonated the original complainant and she was accepted to be the person with whom accused Amol married. If proper precaution and documents would have been taken by both the accused persons Nos.14 and 15, they would have realized the fraud played. This only allows us

to infer that since they had conspired with accused Amol and others, they have created such documents. It could not have been part of their official duty to create false documents. Sanction to prosecute them was not at all required. Learned Additional Sessions Judge had erred in discharging them.

9) Learned Advocate for petitioner relied on the decision in State of H.P. V/s. M.P. Gupta [AIR 2004 SC 730]; wherein it has been held that, "It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar". Further reliance has been placed on the decision in the case of K. Satwant Singh v/s. The State of Punjab [AIR 1960 SC 266]; wherein it has been held that, "It appears to us to be clear that some offences cannot, by their very nature, be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal

Code, is one of them and offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so as to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences". Similar view was taken in Manohar Nath Kaul v/s. State of J & K [AIR 1983 SC 610]; Govt. Of India v/s. Sukhlal Singareni Collieris Company Ltd. And others [1994 CRI. L. J. 418]; & Inspector of Police and another v/s. Battenapatla Venkata Ratnam and another [(2015) 13 SCC 87].

10) Per contra, the learned Advocates appearing for respondents No.2 and 3 have supported the reasons given by the learned Additional Sessions Judge while allowing the application for discharge. It was stated that both the accused No. 14 and 15 have done their acts in their respective

capacity as Notary and Registrar of Marriage. They have taken necessary documents and on the basis of those documents, they have done their official acts. The bare perusal of the documents do not show that they are forged. They had no personal knowledge about the parties. When they have done their acts in good faith, they deserve to be protected from dragged into the litigation.

11) Accused No.14 is the Notary. The affidavit that was produced before accused No.14 had signatures of 3 witnesses and those signatures were identified by Advocate of the parties. There was no room for accused No.14 to suspect any foul play on anybody. The Complainant does not say that accused Amol or other persons were already knowing accused No.14. Mere statement that accused No.14 has conspired with other accused is not sufficient. Even after completion of the investigation, charge-sheet does not bear any such material, which would show conspiracy between accused Amol, other accused and accused No.14. The disputed document of affidavit purports directly to the official act of Notary.

12) In **Chandmal Motilal Bora vs The State Of Maharashtra [2004 (2) Mh. L. J. 41]** it has been observed as follows:

"Therefore, if any allegation is made against a Notary which touches the official performance as a notary, the Criminal Court is forbidden from taking cognizance unless the complaint in writing is made by an officer authorised by the Central Government or State Government by general or special order in this behalf. Therefore, whenever an official act of Notary comes in picture, it becomes the duty of the criminal Court to see, whether the allegations is directly concerned with his official duty or the performance which he has to do as indicated in Section 8 of Notaries Act. The Court which has been requested to take cognizance of the complaint has to apply its judicial mind and to see whether the act which is the subject-matter of the complaint is the official act of a Notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need of sanction, because, the said act is not connected with his official performance, like an allegation showing that notary committed the murder or notary assaulted a person for the purposes of causing simple hurt, grievous hurt etc. If the allegations show that by an act which is not in accordance with the provisions of Notaries Act, the notary has been alleged to have committed an offence, there is no need of having a sanction to the complaint is writing of

an officer as contemplated by provisions of Section 13 of Notaries Act. But if act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognizance of the allegations against the Notary".

The purpose for which such protection has been granted to the Notaries has been stated in this case as follows:

"If such protection is not granted to the Notary, he would be involved, implicated and roped in, in number of offences, because number of documents are being notarised before him in his notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offence of commercial transactions. he would be involved in number of offences concerned with the disposing of property, transfer of the property, sale of the property, exchange of property. He would be also coming in picture as an accused in number of offences connected with number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons who happen to be persons of his acquaintance. Such person may be an advocates, clerks of the advocates, or some persons who are connected with him by his profession as Notary or by his profession generally as a lawyer. If such protection is not granted to a notary, it would be very difficult for him to work

as notary and members of public at large would be facing number of difficulties at every step and with this object Section 13 has been enacted by the Legislature with a foresight".

Same observations have been made in ***Ejaj Ahemad Khan v/s. State of Maharashtra and another [2013 ALL MR (Cri) 522]*** which was relied by the learned Trial Judge. Therefore, when there is bar to take cognizance of the offence, unless the complaint is filed in writing by an officer authorized by Central or State Government against the accused No. 14, and the cognizance was taken in this case in ignorance of Section 13 of the Notaries Act, the charge against him would definitely be groundless. The case can not proceed against accused No.14 in view of error committed in taking cognizance of the offence against him. Therefore, the order passed by the learned Trial Judge in discharging accused No. 14 is perfectly legal.

13) Now turning towards the plea taken by accused No.15, it can be seen that, there is no dispute that he was serving as Divisional Officer of Panchavati Division of Nasik Municipal Corporation, Nasik and also as Marriage Registrar

of his division and therefore he was 'public servant' in view of Section 17 of Maharashtra Regulation of Marriage Bureau Act, 1998. Section 13 of the said Act provides that "No prosecution or suit or legal proceeding be instituted against any person for anything done in good faith under the Act or rules made thereunder". The application to register the marriage was within the official duty of accused No.15. Here, the form and the annexures thereto show that sufficient number of documents were produced before accused No.15 when marriage was registered. The procedure adopted by him was to get as many documents as to support the marriage, identity of the parties etc. Those documents have been produced before him, then how accused No.15 was supposed to come to the conclusion that those documents are false or fabricated? The complainant has not stated that accused No.15 had any personal knowledge about the parties. Accused No.15 was justified in relying on those documents which were produced before him. He has taken proper precautions before entering the marriage in the respective book. He can not be held responsible for those false or fabricated documents, which were not

within his knowledge as 'false &/or fabricated'. He has done the said official act with good faith and therefore, deserves to get protection of Section 13 of the said Act and Section 197 of the Code of Criminal Procedure. The very purpose of Section 197 of the Code is to give protection to the public servants from being dragged into the litigation, when they are discharging their official functions in good faith.

14) The ratio laid down in the decisions relied by the learned Advocate for petitioner can not be denied, but of the facts and evidence of each of the case, Hon'ble Supreme Court had come to the conclusion that those acts could not be part of official act of those accused persons. We are required to test those principles in this case, taking into consideration the evidence collected and allegations made in present case. Neither accused No.14 nor accused No.15 were knowing informant and/or accused Amol prior to the incident. The documents, in question, on the appearance do not show that they are forged or prepared with trick photography. Now the expert

opinion has come, but it was not the part of the job of accused No.14 and 15 to adjudicate the authenticity of documents produced. What was expected from them was the proper procedure and take such documents on record which are sufficient to establish the identity of the parties. Those documents have been taken by both the accused persons. Hence, they have done their duty in good faith and the act was done by them 'in discharge of their duty'. They therefore, deserve protection.

15) There is absolutely no illegality or error in the decision on the application for discharge Exh.31 by learned Additional Sessions Judge-1, Parbhani. No case is made out to exercise the constitutional powers of this Court under Article 226 and 227 of Constitution of India to set aside the said order. The writ petition, therefore, deserves to be dismissed and accordingly it is dismissed.

(SMT. VIBHA KANKANWADI, J.)

BDV