

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

CRIMINAL APPLICATION NO. 7 OF 2020

Pratap s/o. Hanmantrao Patil and another .. Applicants
Versus
The State of Maharashtra and another .. Respondents

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Mr. A. R. Rathod, Advocate for applicants
Mr. M. M. Nerlikar, APP for respondents no. 1 and 2 – State
Mr. Alok Sharma, Advocate for respondent no. 4

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**CORAM : SUNIL P. DESHMUKH AND
NITIN B. SURYAWANSHI, JJ.**

DATE : 7th SEPTEMBER, 2021

PER COURT :

Applicants are before the Court in criminal application questioning sustainability of proceeding initiated against them bearing Summary Trial Case No. 148 of 2019 for offences punishable under Sections 171-C (2)(b), 171-H of the Indian Penal Code, 1860 (IPC) and Sections 123(2), 129(2)(c), 134 of the Representation of the People Act, 1951.

2. Learned counsel for the applicants submits that applicants are employees of private school working as teachers, and they have been arraigned on the suspicion of having committed offence under the provision referred above and have been imputed with the commission of offence referred to above, frivolously and casually.

3. Learned counsel for the applicants purports to point out that, in response to the show cause notice by the Chief Executive Officer of the Zilla Parishad, applicants have tendered explanation referring to their presence in the alleged incident is merely coincidental and not deliberate. Learned counsel further purports to point out that there is no act upon imputed or referred to neither in show cause notice nor in the order shown, the act concerned would not fall in any of the provisions either Representation of People Act or for that other matter Indian Penal Code. He, therefore, urges for quashing of chargesheet filed against them and allow the petition.

4. Learned counsel refers to that applicants have been accused of participating in election campaign of a party at Ahmedpur. He submits that applicants were not engaged at the behest of election commission for any of the duties relating to the election concerned. He further purports to point out that there is no restriction or condition on the employees of private school not to take part in any of the election activities.

5. Apart from aforesaid, learned counsel purports to refer to a case viz; *Bombay University and College Teachers' Union Versus State of Maharashtra and another*, reported in 1990 Mh. L. J. 562, whereunder a division bench of this court had an occasion to

consider the provisions relating to contesting election by employees of private school viz; the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. He submits that rule 41(2), thereunder requiring previous permission of the Management in writing to contest election to public offices is considered to be violative of Article 14 of the Constitution in so far as said requirement is concerned, inasmuch as the discretion conferred on the Management under the said sub-rule is arbitrary. The rest of the rule which enables an employee to contest election to offices is held to be valid.

6. Learned counsel for the applicants, therefore, purports to contend that when contesting election itself is not prohibited and much less are related activities and, thus, against the petitioners, yet, provisions of sections of IPC or Representation of the People Act, 1951 are not attracted and applicants cannot be said to have committed any offence as alleged.

7. The imputations in the chargesheet are to the effect that, the applicants were working as Assistant Teachers were informed to be campaigning for a political party candidates in general elections of 2019, and such a video shooting has been found, and thus, petitioners have contravened the Code of Conduct, Sections 171-C (2)(b), 171-H of IPC and

Sections 123(2), 123(7), 129(2)(c) and 134 of the Representation of the People Act, 1951.

8. The provision of Section 171-C (2)(b) of IPC makes undue influence at elections, an offence, if a candidate or voter would be induced to believe that he would be rendered an object of divine displeasure or of spiritual censure. Section 171-H of IPC is with respect to illegal payment in election. Section 123(2) of the Representation of the People Act, 1951 is undue influence similar in nature to Section 172(2) of IPC. Section 123(7) of said enactment relates to obtaining or procuring or abetting by a candidate or his agent, any assistance (other than the giving of vote) for the furtherance of candidate's election, from any person in the service of the Government and belonging to any of the classes therein. Section 129(2) of said enactment prohibits an officer at election to act for candidates or to influence voting and Section 134 of said enactment relates to breaches of official duty in connection with the election.

None of the imputations in the chargesheet are related to aforesaid provisions and the imputations in the chargesheet are to the effect that applicants are found in the video clip. No specific act constituting any offence has been imputed against the applicants.

9. While, learned counsel appearing for the respondents, purport to support the chargesheet, however, have not been able to reason out sustainability of charges levelled against the applicants and as to how provisions of Sections 123(2) and 123(7) and to Sections 123(2), 129(2)(c), 134 of the Representation of the People Act, 1951 and Sections 171-C (2) (b), 171-H of IPC are attracted.

10. Perusal of the provisions and the contents of chargesheet under the circumstances, would not lead to maintain imputations of offences alleged. We are unable to persuade ourselves that allegations would be sustainable and/or for that matter further prosecution would be worthwhile, while further action would be an exercise in futility.

11. Having regard to foregoing discussion, we allow the application in terms of prayer clause 'B'.

12. Criminal application is disposed of accordingly.

[NITIN B. SURYAWANSHI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE