

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 350 OF 2019

Vasudeo s/o Suryakantbuva Jahagirdar

Applicant

Versus

Vasant Bhagwant Pandav & another

Respondents

Mr. V.D. Patnoorkar, Advocate for the applicant.

Mr. V.J. Dixit, Senior Counsel instructed by Mr. A.S. Kulkarni,
Advocate for both the respondents.

CORAM : M.G. SEWLIKAR, J.

DATE : 17th December, 2021.

PER COURT :

1. This revision under Section 401 of the Code of Criminal Procedure is preferred against the order dated 4th August, 2018, passed by the Additional Sessions Judge, Aurangabad below Exhibit 1 in Misc. Criminal Application No. 275/2018 whereby application filed by the applicant for taking action against respondents No. 1 and 2 for offence punishable under Section 195 read with Section 34 of the Indian Penal Code has been rejected.

2. Facts giving rise to this application are that respondent No. 2 is the son of respondent No. 1. It is not in dispute that respondent No. 1 has left for heavenly abode during the pendency of this revision. It is contended by the applicant that RCS No. 521/1971 was filed by respondents No. 1 and 2 for perpetual injunction against the defendants in that suit. The suit was decreed. Defendants in that suit filed RCA No. 92/1977 which was decided on 1st August, 1980 in which, judgment and decree passed by the learned Trial Court was set aside.

3. It is further contended by the applicant that after one month from the date of decision of appeal i.e. on 1st September, 1980, the idol of Vijayi Pandurang was removed out of the temple for the festival of Janmashtami and kept in the cradle of Janmashtami festival. On the second day, there was no program before the cradle. At about 10.00 to 10.30 pm, the temple was closed. At about 2.00 to 3.00 am, Madhukarbuva woke up and did not find the idol and ornaments in the cradle. Thereafter, the descendent of Eknath Maharaj lodged report of theft with Paithan Police Station. Accordingly, crime No. I-131/1980 for the offence punishable under Section 380 of the Indian Penal Code came to be registered. When

the respondents came to know that police were investigating the matter, they filed anticipatory bail application on 9th September, 1980 before the Court of Sessions. In the said application, name of respondent No. 2 was mentioned as Raghunath Narayanbuva Gosavi instead of Rajendra Vasant Pandav. It was contended in the bail application that respondent No. 2 was studying in 10th standard in S.B. High School, Aurangabad.

4. It is alleged that applicant got knowledge about the said fact in the year 2017 and by filing application under Right to Information Act, he tried to collect information from the said school and the school authorities intimated him that student by the name of Raghunath Narayanbuva Gosavi did not take admission in the school. On making further enquiry, applicant came to know that Raghunath Vasant Pandav i.e. respondent No. 2 had taken admission in the said school on 20th June, 1980 and on 22nd October, 1980, his guardian removed his name from the said school. Applicant further contended that from the said fact, it is clear that 2 ½ months prior to the offence of theft of the idol, guardian of respondent No. 2 removed him from the school at Paithan and admitted in the school at Aurangabad. After anticipatory bail application was allowed, the

guardian of respondent No. 2 removed his name from the said school on 22nd October, 1980. This fact shows that prior to the incident of theft, respondent No. 2 was admitted to a school in Aurangabad to show that he was taking education at Aurangabad. In this manner, respondents No. 1 and 2 have prepared false record and therefore, they are liable to be prosecuted under Section 195 read with Section 34 of the Indian Penal Code.

5. Learned Trial Court dismissed the application without issuing notice holding that no prima facie case was made out for issuance of process. Learned Trial Court held that before registration of offence i.e. on 20th June, 1980, respondent No. 2 took admission in S.B. School and left the school on 22nd October, 1980. It further held that from the fact that respondent No. 2 left the school after grant of anticipatory bail, it cannot be inferred that respondent No. 2 had taken admission in the school at Aurangabad to create evidence.

6. Heard Shri Patnoorkar, learned counsel for the applicant and Shri Dixit, learned Senior Counsel for both the respondents.

7. Learned counsel Shri Patnoorkar submitted that against the judgment of this Court, appeal is pending before the Honourable Supreme Court where applicant came to know that respondents No. 1 and 2 had played this trick and thus by adducing false evidence before the Court they committed offence of perjury.

8. Learned Senior Counsel Shri Dixit submitted that there is nothing on record to show that anticipatory bail application was allowed simply on the ground of hiding real name of respondent No. 2. He submitted that respondent No. 2 was adopted by respondent No. 1 and his wife when respondent No. 2 was 8 years of age. He further submitted that respondent No. 2 was given in adoption to one Gopikabai Gosavi. He submitted that after passing of the order of anticipatory bail, name of respondent No. 2 was removed from S.B. School record and he had taken admission elsewhere. Simply on this count, it cannot be said that respondent No. 2 is guilty of perjury.

9. Anticipatory bail application and order passed thereon is placed on record before the Trial Court. It shows that respondent No. 2 was released on anticipatory bail as there was only suspicion against deceased respondent No. 1 and respondent No. 2. The order

does not show that it was passed only because of concealing the real name of respondent No. 2. The order was passed because there was no cogent evidence connecting respondent No. 2 with the offence. Moreover, so far as respondent No. 2 is concerned, he was 16 years of age at the time of filing of anticipatory bail application. He has been described in the title as 'under guardianship of mother Gopikabai'. Thus, even if it is assumed for the sake of argument that there is perjury, it was not done by respondent No. 2 but it was done by the mother of Respondent No. 2.

10. It is settled principle of law that offence of perjury can be said to have been committed only when the facts are concealed from the Court with the intention to obtain favourable order from the Court. In the case at hand, respondent No. 2 was minor at the time of commission of the alleged offence and even at the time of filing of application for anticipatory bail. Therefore, the alleged change of name is not done by him. In this view of the matter, the learned Trial Court did not commit any error in rejecting the application. I do not find any infirmity in the order of the learned Trial Court.

11. In this view of the matter, the application is devoid of

substance hence stands dismissed. Pending application, if any, does not survive and stands disposed of.

(M. G. SEWLIKAR)
Judge

dyb