

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

CRIMINAL APPLICATION (APL) NO. 61 OF 2015

Mr. Anil Bhauraoji Tadas,
Aged about : 42 years,
Occupation – Service,
R/o Deoli, Tq. - Deoli,
Dist. - Wardha.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through its P.S.O.
P.S. - Wadgaon Road,
Yavatmal (M.S.).

2. Sayyed Maksood Ali s/o Sayyed
Rashid Ali, Aged about : 46 years,
R/o Sawar, Tq. - Babulgaon,
Dist. - Yavatmal.

... **NON-APPLICANTS**

Shri Firdos Mirza, Advocate for applicant.

Shri T.A. Mirza, Additional Public Prosecutor for non-applicant
No.1-State.

Shri Mohammad Ateeque, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 12/02/2021.

ORAL JUDGMENT : (PER : Z.A. HAQ, J.)

1. Heard.

2. A Society registered under the Societies
Registration Act, 1860 and the Maharashtra Public Trusts Act,
1950 as “Urooje Urdu Education Society, Kalamb (hereinafter

referred to as "the Society") established in 1993-94 is running a Secondary School at Sawar, Tq. Babhulgaon, Dist. Yavatmal since 1997. The school administered by the Society came to be recognized for the purpose of grants from the State Exchequer. On 22/06/2014, the non-applicant No.2 lodged a report with the non-applicant No.1 – Police Station contending that Abdul Kalim Abdul Kadar, Ex-Secretary of the Society had misappropriated the amount of grants received from the Education Department during the period from April, 2011 till July, 2012 and a complaint about it was made on 02/07/2013 because of which Crime No.188/2013 was registered for the offences punishable under Sections 420 and 34 of the Indian Penal Code. In the report lodged by the non-applicant No.2, it was alleged that to appoint Wasimoddin Lehajoddin Patel as the Headmaster of the school administered by the Society, Anil Bhauraoji Tadas (present applicant), Rajendra Wasudeorao Wankhade, Headmaster of Ekta Madhyamik Vidyalaya, Mendhla, Tq. Kalamb, Dilip Manikrao Wasekar, President of Ekta Madhyamik Vidyalaya, Mendhla, Tq. Kalamb and Shoyab S. Shah, Headmaster, Elegant English Medium School, Ner, Tq. Ner, Dist. Yavatmal had issued bogus certificates to show that Wasimoddin Patel had requisite

experience for the post of Headmaster as per Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. In the complaint, it was alleged that on the basis of the false and bogus certificates, Wasimoddin Patel was appointed as Headmaster of the school and received salary from the State Exchequer. On the basis of the report lodged by the non-applicant No.2, the impugned First Information Report came to be registered against Wasimmodin Patel, Abdul Kalim Abdul Kadar, Rajendra Wasudeorao Wankhade, Dilip Manikrao Wasekar, Shoyab S. Shaha and the applicant, for the offences punishable under Sections 420, 468, 471, 120-B and Section 34 of the Indian Penal Code.

The applicant has approached this Court by this application under Section 482 of the Code of Criminal Procedure praying that the First Information Report registered against him be quashed. By the order dated 18/03/2015, this Court directed issuance of notice to the non-applicants and further directed that any coercive action should not be taken against the applicant. After the non-applicants filed their responses and after hearing the parties, by the order dated 21/09/2015, Rule came to be issued and interim order was continued which operates till today.

3. The complaint of the non-applicant No.2 - Informant in short is that the accused Nos.2 to 6 (including the applicant) illegally supported the accused No.1 - Wasimoddin Patel to secure the appointment as Headmaster of the school administered by the society, and the present applicant in furtherance of that object, issued false and bogus experience certificate. According to the non-applicant No.2 - Informant, the applicant misused his authority as Headmaster of Madhyamik Vidyalaya Wabgaon, Tq. Deoli, Dist. Wardha and issued bogus certificate in favour of the accused No.1 - Wasimoddin Patel that the accused No.1 - Wasimoddin Patel had worked in Madhyamik Vidyalaya, Wabgaon for the period from 02/07/2001 till 30/04/2002 though the accused No.1 - Wasimoddin Patel never worked in Madhyamik Vidyalaya, Wabgaon. According to the non-applicant No.2 - Informant, the applicant misused his authority as Headmaster of the school and permitted interpolation in the attendance register and other relevant documents to show that the accused No.1 - Wasimoddin Patel worked in Madhyamik Vidyalaya, Wabgaon from 02/07/2001 till 30/04/2002.

4. The facts on record show that the accused No.1 - Wasimoddin Patel was appointed as the Headmaster of the school administered by the society by order dated 07/03/2013. The appointment of accused No.1 - Wasimoddin Patel as the Headmaster of the school was granted approval by the Education Officer by communication dated 23/08/2013. Because of the complaint made by the non-applicant No.2 to the Education Department, the approval granted to the appointment of applicant was cancelled by communication dated 19/06/2014. This decision of cancellation of approval was challenged by the accused No.1 - Wasimoddin Patel before this Court in Writ Petition No.3015/2014 which was allowed by the judgment dated 06/04/2015 and the decision of the Education Officer incorporated in the communication dated 19/06/2014 was set aside and the Education Officer was directed to reconsider the matter after hearing Wasimoddin Patel. The Education Officer, by communication dated 18/05/2015 again cancelled the approval granted to the appointment of Wasimoddin Patel. This decision is challenged before this Court by Wasimoddin Patel in Writ Petition No.5076/2015 in which Rule is issued and the effect and operation of the decision of the Education Officer is stayed. Writ

Petition No.5076/2015 is pending for adjudication and the interim order continues in favour of Wasimoddin Patel.

5. At the time of hearing, submissions filed by the present non-applicant No.2 in Writ Petition No.5076/2015 are pointed out in which the non-applicant No.2 has stated on oath that Wasimoddin Patel possessed the requisite experience and qualifications for being appointed on the post of Headmaster and a resolution is passed by the society on 03/01/2016 to that effect and the complaint of the non-applicant No.2 in that regard is not valid. The non-applicant No.2 has filed his submissions in Writ Petition No.5076/2015 in the capacity as President of the society. The net result is that Wasimoddin Patel continues as the Headmaster of the school administered by the society and is being paid from the State Exchequer.

In this background, we are examining the legality of the report lodged by the non-applicant No.2 against the applicant, voicing grievance that the applicant issued false and bogus certificates in favour of Wasimoddin Patel on the basis of which Wasimoddin Patel got appointed as the Headmaster of the school.

6. We find that except for the bald averments of the non-applicant No.2 in the report lodged by him that the accused Nos.2 to 6 (including the present applicant) illegally supported Wasimoddin Patel to secure the appointment on the post of Headmaster of the school by supplying false and bogus documents/certificates, there is no material on record to show that the applicant was aware that the experience certificate issued by him in favour of Wasimoddin Patel was to be used by Wasimoddin Patel for such purpose. We find that in the experience certificate, it was stated that Wasimoddin Patel had worked in Madhyamik Vidyalaya, Wabgaon from 02/07/2001 till 30/04/2002 as an untrained teacher. It is well settled law that to lay charge of cheating, the preliminary requirement of intention of the accused at the inception should be fulfilled, which is lacking in the present case.

As we find that the material on record is not sufficient to justify the registration of First Information Report against the applicant for the offence punishable under Section 420 of the Indian Penal Code, the registration of the offence punishable under Section 468 of the Indian Penal Code also cannot be sustained. The registration of First Information Report

against the applicant for the offence punishable under Section 471 of the Indian Penal Code also does not withstand the scrutiny of law as there is nothing on record to even remotely suggest that the applicant had issued the experience certificate in favour of Wasimoddin Patel for the purpose as alleged. Even going by the accusations made by the non-applicant No.2, the complaint is that Wasimoddin Patel has used the forged experience certificate as genuine. It is not understood as to how the First Information Report can be registered in such facts against the applicant for the offence punishable under Section 471 of the Indian Penal Code.

7. On scrutiny of the matter, we find that the non-applicant No.2 had abused the process of law and process of Court with ulterior motive. The non-applicant No.2 filed complaint against Wasimoddin Patel and challenged his appointment as the Headmaster of the school of the society on the ground that he was not having the requisite experience, and then after becoming President of the society, a resolution is passed by the society stating that now, Wasimoddin Patel fulfills the requirement of experience and qualifications and therefore, he is appointed permanently on the post of Headmaster of the school administered by the society of which the non-applicant No.2 is the

President. We fail to understand that as to how the appointment of Wasimoddin Patel, if illegal at its inception can be regularized subsequently without appointing him by following due procedure for appointment on that post. Be that as it may, we are not required to delve into those issues in the present matter. However, we have dealt with this aspect to examine the conduct of the non-applicant No.2.

8. We find that the report lodged by the non-applicant No.2 against the applicant is not only unsustainable in law but is vexatious. In our view, continuation of criminal proceedings against the applicant, who happens to be the Headmaster of Secondary School since last more than 20 years will result in unnecessary harassment of applicant and would be an abuse of process of Court.

9. Hence, we pass the following order :-

- i] The First Information Report No.327/2014 registered against the applicant with the non-applicant No.1 - Police Station is quashed.
- ii] As we find that the report lodged by the non-applicant No.2 against the applicant is vexatious,

and looking to the facts which have come on record, we impose costs of Rs.1,00,000/- on the non-applicant No.2.

iii] The amount of Rs.1,00,000/- shall be deposited by the non-applicant No.2 with the Registry of this Court till 20/03/2021. On deposit of amount of Rs.1,00,000/-, Rs.50,000/- be given to the applicant and Rs.50,000/- be given to the office of Government Pleader, Nagpur Bench, Nagpur in Library Fund for making available video-conferencing facility in the Government Pleader's Office.

iv] If the amount of Rs.1,00,000/- is not deposited by the non-applicant No.2 with the Registry of this Court till 20/03/2021, issue bailable warrant against the non-applicant No.2 - Sayyed Maksood Ali s/o Sayyed Rashid Ali to secure his presence before this Court on 31/03/2021.

JUDGE

JUDGE