

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 99 OF 2020.

Jayshri Omprakash Desai and two others.

-Versus-

State of Maharashtra, through P.O. Yavatmal City, Yavatmal.

CRIMINAL APPLICATION [ABA] NO. 39 OF 2021.

Krushna Harishchandra Kaware

-Versus-

State of Maharashtra, through P.O. Yavatmal City, Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

S/Shri P.R. Agrawal and V. Dahat, Advocates for
Applicants.

Shri M.J. Khan, A.P.P. for the Non-applicant.

Shri S.G. Malode, Advocate for the Intervenor.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 08, 2021

Heard.

2. Both Criminal Applications arise out of Crime No.31/2020 registered with the non-applicant – Yavatmal City Police Station, Yavatmal for the offence punishable under Sections 420, 408, 409, 467, 468, 471 read with Section 34 of the Indian Penal Code. In apprehension of arrest in said crime, applicants are praying for grant of pre-arrest protection.

Applicant – Jayshri, was Sarpanch whilst

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the applicant – Omprakash was Up-Sarpanch of Gram Panchayat, Pimpalgaon at the relevant time. Likewise applicant Krushna was Secretary of the said Gram Panchayat. Applicant Mayur was a son of Jayshri and Omprakash, who was illegally appointed in the services of Gram Panchayat.

3. It is the prosecution case that applicants being office bearers of the Gram Panchayat, Pimpalgaon made illegal appointment of applicant Mayur, by preparing forged and fabricated documents of Gram Panchayat and thereby caused huge loss of public funds. The informant, who was ex-member of the Gram Panchayat, has filed an application under Section 156[3] of the Code of Criminal Procedure, on the basis of which crime came to be registered.

4. Gram Panchayat, Pimpalgaon was dissolved on 22.01.2016, and merged into Nagar Parishad, Yavatmal. At the time of merger of Gram Panchayat there were 4 permanent employees, whilst two were on temporary basis. It was decided to forward the proposal for absorption of permanent employees. Applicants Jayshri and Omprakash by joining hands with others, including Krushnarao Kaware, have

prepared forged back dated resolutions for giving illegal appointment to the applicant Mayur and one Chetan Mankar. It is alleged that in the Gram Panchayat register back dated resolutions were entered to show that the applicant Mayur was in the service of the Gram Panchayat. At the relevant time, applicant Mayur was taking education in ITI, however, on the basis of forged resolution, he was shown to be in the service with a view of absorbing him in the Nagar Parishad. It is alleged that salary was also paid to Mayur, though his appointment was illegal.

5. Learned Counsel appearing for applicants has submitted that already the aspect of legality of appointment of applicant Mayur is subjudice. He has produced various documents in support of his contention. It reveals that initially appointment of applicant Mayur was cancelled vide order dated 13.02.2017. It was challenged by applicant Mayur in Writ Petition No.957/2017, in which the impugned order of cancelling the appointment was quashed and set aside. Thereafter, vide communication dated 22.09.2017, it was informed that the cancellation of appointment was proper. Again the applicant Mayur

along with Chetan had challenged the said communication in Writ Petition No.6711/2017, in which the impugned communication was quashed and they were reinstated in service. Later on, an enquiry was held in which the appointment was again cancelled by the Divisional Commissioner. The said order was again challenged in Writ Petition No.8769/2018, which is pending. It is primely submitted that the issue regarding legality of the appointment is subject matter of challenge in Writ Petition. According to applicants, after merger the entire record of the Gram Panchayat was handed over long back to the Nagar Parishad, and therefore, nothing is to be recovered. Moreover, it is submitted that applicants were protected by this Court long back vide order dated 17.02.2020 and 21.01.2021, which is prevailing till date.

6. While resisting bail, State as well as the intervenor contended that applicants Jayshri and Omprakash by misusing their power illegally appointed their son Mayur as recovery Clerk w.e.f. 31.10.2014. It is contended that at the relevant time Mayur was taking education in ITI, however, he was shown to be appointed by fabricating Gram Panchayat record. It is

stated that as per government resolution dated 21.01.2000, the Gram Panchayat can appoint 4 employees in Class-IV category, however, excess appointments were made without following the Rules. It is stated that showing temporary appointment of Mayur as recovery clerk, salary of Rs.56,000/- has been disbursed to him.

7. The dispute appears to be long standing. The informant has obtained certain information under Right to Information Act, and on that basis has put his grievance. Record indicates that in almost every proceeding, the informant has intervened to resist the appointment of applicant Mayur. Gram Panchayat, Pimpalgaon was dissolved and merged into Nagar Parishad in the year 2016. Naturally the entire record would go to the Nagar Parishad. Enquiry report dated 15.12.2018, indicate several irregularities in appointment, however, the said aspect is subject matter of pending Writ Petition. This Court cannot consider the legality of the appointments, while dealing with bail application.

8. The issue particularly hinges around the appointment of applicant Mayur, which will be decided

in appropriate proceedings. So far as the allegations about fabricating Gram Panchayat record is concerned, it is an affair of the year 2016. There is no material to indicate that the Nagar Parishad has not received the entire past record. It is brought to the notice that most of the co-accused were protected by the Court. It is submitted on behalf of applicant Krushna, that at the time of alleged appointment of Mayur, he was not the Secretary of the Gram Panchayat.

9. Already applicants are protected by this Court since long. There is no complaint about misuse of liberty. Having regard to the nature of accusation and multiple proceedings going on, applicant's liberty can be protected by directing them to join the course of investigation. The allegation about fabrication of document is of the year 2016. The enquiry report does not specify about particular document. Hence, the following order.

- (i) Criminal Applications are allowed and disposed of.
- (ii) Interim orders dated 17.02.2020 and 27.01.2021 are made absolute on the same terms and conditions.
- (iii) Applicants/accused shall continue to attend

Order

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the concerned police station on every Sunday in between 11 a.m. to 2 p.m., till the filing of charge sheet or for a period of 6 months, whichever is earlier.

- (iv) Applicants/accused shall not tamper with the prosecution evidence in any manner.
- (v) Breach of any of the conditions, may give rise to the prosecution to move for cancellation of bail.

JUDGE

Rgd.