

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

CRIMINAL APPLICATION (APL) NO.901 OF 2015

Ashok S/o. Mariba Sirse,
Aged about 48 years, Occ. - Service,
R/o. Z. P. Quarter No.1,
Nagar Road, Beed.

....APPLICANT

----- VERSUS -----

1. State of Maharashtra, through
Police Station Vadgaon Road,
Yavatmal.

2. Gajanan S/o. Ajabrao Masram,
Aged : 29 years, Occ.: Service,
R/o. Godhni, Tq. Yavatmal.

.... NON-APPLICANTS

Shri Abhay Sambre, Advocate for the applicant.

Shri N. S. Rao, A.P.P. for the non-applicant No.1/State.

Ms. Falguni Badani, Advocate h/f. Shri S. V. Sirpurkar, Advocate for the
non-applicant No.2.

CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATE : 03.03.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged registration of the First Information Report No.6/2011, consequent charge-sheet No.142/2012 and proceedings of Regular Criminal Case

No.522/2012 pending before the Judicial Magistrate First Class, Yavatmal for the offences punishable under Sections 465, 468, 469, 471, 420 and 120-B of the Indian Penal Code.

3. The non-applicant No.2 filed complaint with the Chief Judicial Magistrate, Yavatmal alleging that the non-applicant No.2 had resorted hunger strike due to non-payment of his salary and on the promise of the applicant that salary will be paid, the non-applicant No.2 has withdrawn his hunger strike.

4. It is alleged that the other accused had promised to pay salary of non-applicant No.2 for 30 months and compromise agreement dated 20.11.2008 was entered into between the other accused. It is alleged that the applicant in connivance with the other accused forged report and prepared false documents to show that the non-applicant No.2 has misappropriated an amount of Rs.12,125/- which was never handed over to the non-applicant No.2. It is further alleged that it is due to report prepared by the applicant that the non-applicant No.2 had misappropriated the amount of Grampanchayat, the Block Development Officer, who is accused No.3 in the complaint is not paying salary of the non-applicant No.2. Therefore, it was prayed that the offences under Sections 465, 469, 471, 420, 468 and 120-B of the Indian Penal Code be registered against the applicant and others.

5. The learned Judicial Magistrate First Class, Yavatmal by order dated 29.09.2011 directed that complaint be sent to Police Station, Yavatmal to investigate the offence in accordance with law under Section 156(3) of the Code of Criminal Procedure with direction to register the offence.

6. In pursuance of the order dated 29.09.2011, the First Information Report came to be registered against the applicant with the accusations, which were made in the complaint filed before the Judicial Magistrate First Class, Yavatmal by the non-applicant No.2.

7. After the investigation, the charge-sheet No.142/2012 was filed against the applicant and others. The applicant has therefore, challenged registration of the First Information Report, charge-sheet filed against the applicant and also the proceedings of Regular Criminal Case No.522/2012.

8. This Court on 08.02.2016 issued notice to the non-applicants and granted *ad-interim* relief in terms of prayer clause (iii). On 18.11.2016, this Court admitted the application and continued the interim relief granted.

9. The non-applicant No.1 in pursuance of the notice, filed reply stating that the offence was registered in pursuance of

the order of the Judicial Magistrate First Class, Yavatmal under Section 156(3) of the Code of Criminal Procedure and charge-sheet in the matter has been filed against the applicant. There is no application filed by the applicant for quashing the charge-sheet and there is delay in filing the application. It is therefore, prayed that the application deserves to be dismissed.

10. We have carefully considered the contents of the allegations in the First Information Report alongwith the allegations in the complaint filed by the non-applicant No.2 before the Chief Judicial Magistrate, Yavatmal. It is not in dispute that at the relevant time, the applicant was working as a Deputy Chief Executive Officer of Zilla Parishad, Yavatmal. From the report, which is subject matter, which has been disputed by the non-applicant No.2, it appears that the said report is an enquiry report submitted by the applicant in his capacity as a Deputy Chief Executive Officer of Zilla Parishad, Yavatmal. It is stated in the report that the applicant had conducted the said enquiry in pursuance of the order passed by the State Government and Divisional Commissioner. It appears that since the applicant has conducted enquiry in his official capacity as a Deputy Chief Executive Officer, Zilla Parishad, Yavatmal as per the direction of the State Government and the Divisional Commissioner, therefore the

allegations against the applicant that the report is forged and therefore, the applicant has committed an offences under Sections 468 and 471 of the Indian Penal Code cannot be accepted.

11. From the allegations in the complaint and the First Information Report, it appears that the main grievance of the non-applicant No.2 against the applicant is only to the extent that it is on the assurance that salary will be paid to the non-applicant No.2, the non-applicant No.2 withdrawn his hunger strike, which cannot be termed as any offence. Insofar as allegation regarding misappropriation committed by the non-applicant No.2 as per the contents of the report is concerned, it was necessary for the non-applicant No.2 to adopt appropriate legal remedies challenging the legality of the said report as the said report has been submitted in view of the directions of the State Government and the Divisional Commissioner.

Except the two allegations referred above, there are no allegations against the present applicant.

12. Having carefully considered the allegations in the First Information Report and the material produced by the applicant, we are satisfied that even if the allegations in the First Information Report in the light of material produced by the applicant are

considered, the ingredients of the offences alleged against the applicant are not fulfilled. We are therefore, satisfied that the continuation of the present proceedings against the present applicant would amount to abuse of process of Court.

13. We therefore, pass the following order.

The First Information Report No.6/2011, consequent charge-sheet No.142/2012 and proceedings of Regular Criminal Case No.522/2012 pending before the Judicial Magistrate First Class, Yavatmal for the offences punishable under Sections 465, 468, 469, 471, 420 and 120-B of the Indian Penal Code are quashed and set aside only against the present applicant.

Rule is made absolute in the above terms.

JUDGE

JUDGE