

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

CRIMINAL APPLICATION NO.157 OF 2021

Dr. Bhagwat Narayan Dahiphale,
Age-42 years, Occu:Government Service,
R/o-Plot No.16, Sandeshnagar,
Shriram Chowk, Savedi,
Ahmednagar.

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Tophkhana Police Station,
Tal-Nagar, Dist-Ahmednagar,

2) Mangal Kisan Hajare,
Age-38 years, Occu:Household,
R/o-Sagar Complex, Station Road,
Agarkar Mala, Ahmednagar.

...RESPONDENTS

(Resp. No.2 – Orig. Complainant)

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Mr. S.S. Jadhavar Advocate for Applicant.
Mr. S.J. Salgare, A.P.P. for Respondent No.1.
Mr. D.R. Markad Advocate for Respondent No.2.

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**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 3rd AUGUST, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard the learned

Advocates for the parties finally, by consent.

2. The applicant, by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, prays for quashment of the First Information Report (for short "FIR") vide Crime No.7743 of 2020 registered with Tophkhana Police Station, Ahmednagar on 28th December 2020 for the offence punishable under Sections 384, 385, 500, 501 read with Section 34 of the Indian Penal Code, and by way of amendment the applicant prays for quashment of subsequent filing of the charge-sheet on the basis of the said FIR vide R.C.C. No.508 of 2021 pending before the learned Chief Judicial Magistrate, Ahmednagar.

3. Heard learned Advocate Mr. Jadhavar for the applicant, learned APP Mr. Salgare for respondent No.1 – State and learned Advocate Mr. Markad for respondent No.2.

4. It has been vehemently submitted on behalf of the applicant that perusal of the FIR lodged by present respondent No.2 – informant would show that it is mainly against accused No.1 and then she says that when she met accused No.1, he

had informed her that the present applicant was supplying the confidential documents from the office to him. According to the informant, accused No.1 was making use of those confidential documents to level allegations against the informant and for extorting money. The entire charge-sheet does not contain any such evidence against the present applicant. There is no investigation as to how and which documents were shared by the applicant to original accused No.1. It would be a futile exercise to ask applicant to face the trial. The applicant is a Government servant and he has been unnecessarily dragged in view of the termination of the services of the informant by the Government. In fact the informant had contested the election though she was on contract basis employed in a Government department and when original accused No.1, who is a journalist, was collecting the information and also the fact that all those misdeeds of the informant were published in daily Sakal newspaper as a news item, she was taking objection. Learned Advocate appearing for the applicant prayed for quashment of the FIR as well as proceedings.

5. Per contra, the learned APP appearing for the State as well as learned Advocate appearing for respondent No.2 strongly

opposed the application and submitted that unless those documents which accused No.1 was utilizing to extort money from the informant would have been supplied from the office, accused No.1 would not have gone ahead for extortion. After the investigation it was transpired by the Investigating Officer that accused No.2 was the instrumental in supplying the information and therefore, this is not a fit case where the inherent powers should be utilized.

6. Respondent No.2 – informant has lodged the FIR on 28th December 2020. In her FIR she has stated that she took up job with District Tuberculosis Department of Zilla Parishad on contract basis prior to 2019. On 10th July 2019 original accused No.1 had given an application under Right to Information Act and sought information of the informant and thereafter a representation by *Yashashwini Mahila Brigade* was received by the said office of the informant on 24th July 2019 stating about corruption in the department. A news item was published in Daily Sakal on 9th August 2019 stating that by concealing the fact that she is serving, the informant has contested the municipal corporation elections. According to the informant, those news items were defamatory and were given only in Daily

Sakal on several occasions. Thereafter informant has taken one press conference to give the clear picture. Two days thereafter i.e. on 11th August 2019 informant was called by accused No.1 outside her office and then he told her that the applicant is supplying him all the necessary papers and if she wants to get clean chit then she should give him an amount of Rs.10,00,000/-. When she showed her inability, accused No.1 gave threat that then she will have to give up the job. According to the informant, as the said amount was not given accused No.1 in connivance with accused No.2, had published those news items defaming her. She was dismissed from the service on 16th August 2019 and then she had challenged the said order before this Court by filing Writ Petition. According to the informant, it was held by this Court in its order dated 6th February 2020 that Maharashtra Civil Services Rules are applicable to the permanent employees and not the contract employees. However under the caption that the High Court has also confirmed the termination of the informant, accused No.1 had published the said news. The informant, therefore, states that both the accused have committed offence.

7. It will not be out of place to mention here that after the disinclination was shown to grant any relief to original accused No.1 who had filed separate application bearing Criminal Application No.904 of 2021, it has been withdrawn today itself. When now this Application is restricted to the present applicant who has been posed as accused No.2, then we are required to consider what was the evidence that was collected against him and what are the allegations against him in the FIR. Since the entire contents of the FIR are narrated above, it can be seen that except the statement allegedly made by accused No.1 to the informant, there is nothing. Another fact to be noted is that even if for the sake of argument it is accepted that such statement was made by accused No.1 to the informant, then it cannot be stated, in absence of specific statement to that effect that, accused No.1 was asking the amount in the form of extortion to the informant for himself as well as for accused No.2 i.e. present applicant. In her FIR itself informant has stated that accused No.1 had given application under the Right to Information Act seeking information in respect of the informant. Being the competent authority under the Right to Information Act, the applicant might have supplied certain documents to him but that cannot be taken as part of extortion. If we consider the

statements of various witnesses then except witness Vilas Chandrakant Bhujbal, who is the husband of the informant and respondent No.2, nobody has stated anything against the present applicant. It also appears that one Dr. Sunil Pote was the then District Tuberculosis Officer, who was the superior to the applicant, and in his statement under Section 161 of the Code of Criminal Procedure he has stated that applicant was entrusted the job of supplying information under the Right to Information Act and he himself was the appellate authority under the said Act. According to him, the information was supplied by the applicant after it was asked under the Right to Information Act. We do not want to go into the aspect that whether the informant had taken the interpretation of the order passed by this Court in her Writ Petition wrongly or rightly. But then as regards the present applicant is concerned, certainly there is nothing. Allowing the applicant to contest the prosecution would be a futile exercise and injustice to him when it appears that he was doing his job under a particular Act. Therefore, in view of the parameters in ***State of Haryana and others V/s Ch. Bhajan Lal and others, AIR 1992 SC 604*** case is made out to exercise the powers under Section 482 of the Code of Criminal Procedure

to quash the FIR as well as the proceedings to the extent of present applicant. Hence, the following order:-

O R D E R

(I) The Application stands allowed.

(II) The First Information Report bearing Crime No.7743 of 2020 dated 28th December 2020 registered with Tophkhana Police Station, Ahmednagar for the offence punishable under Sections 384, 385, 500, 501 read with Section 34 of the Indian Penal Code, so also the consequent proceedings of R.C.C. No.508 of 2021 pending before the Chief Judicial Magistrate, Ahmednagar, are quashed and set aside, to the extent of present applicant.

(III) Rule made absolute in above terms.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE