

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

CRIMINAL WRIT PETITION NO. 194 /2020

Mohammad Illiyas Mohammad Shafi and ors ...Versus... Shaheen Parveen
Ziaulmallan Khan and ors

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

Court's or Judge's orders

Mr. PPAgrawal, Advocate for the petitioner.
Ms. Shamsi Haider, APP for respondent No.2/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/02/2022

1] Mr. Walthare, learned counsel for Respondent No.1 continues to remain absent today also.

2] The order dated 17.2.2022 records the submissions of learned counsel for the petitioner in detail, as under :

“2. The petition challenges the order dated 26.07.2018 passed by the learned Magistrate, issuing process under Sections 465, 467, 477A, 417, 420, 471, 120B, 409, 418 and 166 of the Indian Penal Code in Criminal Case Case No. 145 of 2010 and the subsequent judgment of the learned Sessions Court dated 15.11.2019, dismissing the challenge to the same.

3. It is contended that the respondent no.1, had filed a complaint, on 17.08.2010,

alleging cheating and forgery by the petitioners, in the matter of appointment of the petitioner No.3, against the petitioners. On 22.03.2011 an enquiry was ordered by the learned Magistrate, in pursuance to which on 15.07.2011 a report was submitted by the police (page 38), wherein it was stated that there was no substance in the complaint. As the transfer order issued to the respondent no.1, was challenged by her in Writ Petition No.1553 of 2011, this Court, by an order dated 29.03.2011 directed the Education Officer, to make an enquiry and submit a report. Accordingly, enquiry was conducted by the Education Officer, who, by his report dated 05.07.2011 (page 109), opined that there was no forgery. He has also recorded, that the respondent no.1 was called upon to submit her fingerprints to verify the same on the service book, roster and other documents, however, she had refused to do so and therefore, it was opined that she was unable to substantiate her allegations and the entries in the service book and other records were found to be correct. Writ Petition No.1532 of 2011 came to be withdrawn by the respondent no.1. The report of the Education Officer thereafter, came to be challenged by the respondent no.1 in Writ Petition No.4433 of 2011, which also came to be withdrawn on 25.07.2011 (page 112) indicating that the findings rendered in the enquiry report dated 05.07.2011 were rendered final.

4. On 26.03.2012, the learned Magistrate issued process, which was challenged in revision by the petitioner which came to be dismissed on 13.07.2012, which, in turn, is challenged in Writ Petition No.497 of 2013, which came to be allowed on 26.09.2017 (page 78/81) and the matter was remanded back to the

learned Magistrate. The learned Magistrate thereafter by the order dated 26.07.2018 again issued process, which order came to be challenged in revision by the petitioners being Criminal Revision No.13 of 2018, which came to be dismissed by judgment dated 15.11.2019, as a result of which, the present petition is before this Court.

5. Mr. Agrawal, learned counsel for the petitioners submits that the Courts below, failed to take into consideration, the police report dated 15.07.2011 as well as the report of the Education Officer dated 05.07.2011, which was rendered final, both of which, categorically opined that there was no substance in the complaint. He further contends that the order of the learned Magistrate dated 26.07.2018, is merely reproduction of the earlier order dated 26.03.2012 and clearly ignores the aforesaid two reports and is merely based upon conjectures and surmises. He further relies upon the conduct of the respondent no.1, as recorded by the Education Officer in his report dated 05.07.2011 of refusing to give her fingerprints for the purpose of verifying the same on the service book, roster and other documents. He, therefore, submits that the order of issuance of process ignoring the report of the Police Officer as well as the Education Officer cannot be sustained. It is further contended that the reasons recorded by the learned Magistrate in para 9 for not relying upon the police report are clearly untenable, considering the contents of the reports and the opinion of the Education Officer of the respondent no.1 having failed to provide her fingerprints for the purpose of verification. In so far as, the judgment in revision is concerned, he contends that the same is based upon incorrect

premise, that the Education Officer had opined, that enquiry and investigation is required in the matter, which according to him, the report dated 05.07.2011 does not say so (pg.110). On the contrary, he submits that the report categorically records the non-cooperation of the respondent no.1 in the enquiry in spite of allegation being made that the fingerprints on the service book of the respondent no.1 were forged and fabricated. It is, therefore, submitted that the impugned orders cannot be sustained and are required to be quashed and set aside”.

The matter was kept today for affording opportunity to the respondent no.1 appearing through Advocate Mr. Walthare, who, however, is absent today also.

3] On 17.2.2022 itself it was indicated that in case if Mr. Walthare, learned counsel for Respondent No.1 does not appear on the next date, the Court shall decide the matter on its own merits. Since Mr. Walthare, learned counsel for Respondent No.1 is absent today also, the court is left with no option than to proceed to decide the matter on its own merits.

4] Learned APP does not dispute the report dated 15.7.2011 by the API, Police Station Darwha, in which it has been categorically opined that there was no substance in the complaint filed by the Respondent No.1 and stands by the same.

5] It is material to note that Respondent No.1 had made an allegation that the petitioners in collusion with the Education Officer (Secondary) - one Vitthal Pandurang Patil had conspired to appoint the petitioner No. 3 as a Head Master, by forging the documents such as service-book of respondent No.1 and other documents. When an enquiry was directed by the learned Magistrate under Section 156 (3) of Cr.P.C, the report dated 15.7.2011 by the API, PS Darwha, categorically stated that no case was made out. It is material to note that the said report considers in detail the manner in which the petitioner No. 3 as well as Respondent No.1 came to be appointed. The Respondent No.1 was appointed as an Assistant Teacher in the HKMC Urdu High School, Talegaon, on 1.7.2002, as per the communication by the Deputy Director of Education, dated 5.6.2011, which also indicates that appointment of Respondent No.1 was approved on 30.12.2002. The petitioner No. 4 came to be appointed on 1.7.2004 as an Assistant Teacher and approval to his appointment was granted by the Education Officer (Secondary) on 9.6.2009 w.e.f. 1.7.2004. The Education Officer further by his communication dated 16.3.2007 has granted approval to the appointment of the petitioner No. 3 as a Head Master and has also granted increments as indicated by the communication dated 5.2.2011. It is thus apparent that any allegation of forgery, tampering are ruled

out in the report by the Police in pursuance to a direction in that regard by the learned Magistrate under Section 156(3) of Cr.P.C. That apart, the report dated 5.7.2011 (page 109) by the Deputy Director of Education, which was in pursuance to the direction of this Court in Writ Petition No. 1532/2011, also on the basis of the seniority list, roster, service books, appointment orders, joining reports etc., indicates that the allegations made by Respondent No.1, were ruled out. It also records that Respondent No.1 herself when called upon to give her finger prints for the purpose of ascertaining the veracity of her allegations regarding tampering of the service-book, had refused to do so. It is also an admitted position that Writ Petition No. 4433/2011 challenging this report dated 5.7.2011, came to be withdrawn on 25.7.2012, as a result of which the findings rendered in the report dated 5.7.2011 became final and binding.

6] The order dated 26.7.2018 passed by the learned JMFC issuing process, clearly indicates that both these reports have not been considered by the learned JMFC in their proper perspective. So also the finality attached to the report dated 5.7.2011 of the Deputy Director of Education, due to the withdrawal of Writ Petition No. 4433/2011, has also not been considered and there are no reasons recorded by the learned Magistrate for refusing to consider the same, in view of which in my considered opinion, in the light what has been

stated above, the order dated 26.7.2018 issuing process cannot be sustained. The learned Sessions Court in revision by the judgment dated 15.11.2019 also does not appear to have considered the above position and so also the conclusivity of the report dated 5.7.2011. That apart, para 20 of the judgment of the learned Sessions Court would indicate that it is based upon a totally incorrect premise by holding that the enquiry report dated 5.7.2011 indicated that the enquiry and investigation is required to be made regarding the allegations made by the complainant against the petitioners, whereas in fact the said report dated 5.7.2011 completely exonerates the petitioners and does not make any such recommendation.

7] In view of the aforesaid discussion and in light of the enquiry report dated 5.7.2011, which is in pursuance to the direction as passed by this Court in Writ Petition No. 1532/2011 and the subsequent withdrawal of Writ Petition No. 4433/2011 by the Respondent No.1 and consequent non-consideration of the effect of the same, by the Courts below, the order dated 26.7.2018 passed by the learned JMFC issuing process as well as the judgment dated 15.11.2019 passed by the learned Sessions Court in revision, cannot be sustained. The same are hereby quashed and set aside and the complaint filed by Respondent No.1 is dismissed.

8] The petition is accordingly allowed in the above terms. No costs.

JUDGE

Rvjalit