

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

CRIMINAL APPLICATION (APL) NO.1008 OF 2018

1. Fazal-ur-Rehman Gulab Nabi Ansari,
Aged 45 years, Occ: Service,
R/o Balapur, Tq. Balapur, Dist. Akola
2. Mohammad Musaddiq Abdul Khaliq
Age about 65 years, Occ: Retired,
R/o behind Pakija Pan Centre, Firdos Colony,
Mujaffar Nagar, Akola, Tq. and Dist. Akola.
3. Ku. Ayesha Parveen Abdul Kavi
Aged about 40 years, Occ: Service,
R/o Qadripura, Balapur, Tq. Balapur,
Dist. Akola.

...APPLICANT

---VERSUS---

Ramlal Jabraji Umale
Age 72 years, Occ: Journalist,
R/o Rajgruha, 94 Nirman Nagar, Bye-Pass
Road, Akola, P.S. Old City, Akola.

...NON-APPLICANT

Shri Karan Bhende h/f Shri A.S. Dhore, Advocate for applicant.
Ms P.D. Rane, Advocate appointed for non-applicant.

**CORAM : G.A. SANAP, J.
DATE : DECEMBER 06, 2022.**

ORAL JUDGMENT :

1. In this application, the applicants-accused have prayed to
quash the Regular Criminal Complaint No.87 of 2012 pending on

the file of learned Judicial Magistrate First Class, Balapur for commission of offences punishable under Sections 420, 409, 468, 471 read with Section 34 of the Indian Penal Code (IPC).

2. It is the case of the applicants that they have not committed any offence. The facts stated in the complaint do not disclose the commission of the offences for which the process was issued by the learned Magistrate. The complainant a journalist is not directly or indirectly concerned with the day-to-day management of the institution. He has no *locus standi* to file the complaint. The amount/grants received from the Government was properly utilized for the purpose for which it was sanctioned. The utilization certificate of the grants was issued by the Education Officer. The learned Additional Sessions Judge while rejecting the revision application filed by the applicants challenging the order of issuance of process has not properly considered all these aspects. It is the case of the applicants that the criminal complaint was filed to settle the score on account of the political rivalry. The private complaint filed against the applicants is abuse of process of law. Continuation of the prosecution would result in the miscarriage of justice. It is, therefore, prayed that the prosecution/private complaint be quashed.

3. The complainant through learned appointed advocate filed reply and reiterated the facts stated in the complaint.

4. I have heard Shri Karan Bhende, learned advocate for the applicants and Ms P.D. Rane, learned appointed advocate for the non-applicant. Perused the record and proceedings.

5. Learned advocate for the applicants submitted that there was no iota of material to form an opinion with regard to the commission of the offences mentioned in the complaint by the applicants. Learned advocate submitted that the complainant has no *locus standi* to file the complaint. It is submitted that the learned Magistrate as well as learned Additional Sessions Judge has not taken this vital and important aspect into consideration. He submitted that on the basis of the available record it *prima facie* appears that allegations of forgery of the utility certificate are false and frivolous. He therefore submitted that in order to meet the ends of justice, it is necessary to quash the criminal complaint.

6. Learned advocate appearing for the complainant submitted that before issuance of process, considering the serious nature of allegations made in the complaint, learned Judicial Magistrate First Class, Balapur directed the Incharge of the Balapur

Police Station to conduct the investigation for the purpose of deciding the sufficient ground for proceeding against the applicants on the basis of the facts stated in the complaint. Learned advocate took me through the report of the investigation/enquiry conducted by the police officer and submitted that the investigation revealed that the signature of the Education Officer on the utility certificate was forged. She submitted that all these facts have been taken into consideration by the learned Magistrate as well as by the Revisional Court. She further submitted that on the basis of the material on record the offences mentioned in the complaint have been *prima facie* made out.

7. Perusal of the judgment and order passed by the learned Additional Sessions Judge, Akola reveals that the objection of *locus standi* of the complainant has been dealt with. It is undisputed that the complainant is not directly involved in the day-to-day management or affairs of the institution. The utilization certificate is purported to have been signed by Education Officer was brought into existence. It is to be noted that the cognizance of the offence can be taken upon information received by the learned Magistrate from any person other than police officer. The cognizance can also be taken upon receiving a complaint of facts, which constitute

commission of offence. Section 190 of the Code of Criminal Procedure does not require that the person making complaint or having information of commission of offence must be directly or indirectly concerned with the matter. In my view, there is no substance in the objection on the point of *locus standi*. The learned Magistrate was empowered to take cognizance on the basis of the facts disclosing the commission of the offences at the behest of the complainant. Therefore, the objection on the point of *locus standi* was rightly considered and dealt with by the learned Additional Sessions Judge.

8. It is submitted that in this case the verification statement of the complainant was not recorded. It is submitted that without recording verification statement of the complainant, the learned Magistrate directed the police officer to conduct the investigation. This objection has also been dealt with by the learned Additional Sessions Judge. The learned Additional Sessions Judge has referred to the decision of the Karnataka High Court in the case of **Balangauda Patial Vs. S.M. Korabu [(1995) I CCR 228]**. In my view, on this point also there is no substance in the arguments of the learned advocate for the applicant. It is seen on perusal of the record that the complainant had filed his affidavit on record. It was duly

verified by the learned Magistrate before directing the police investigation. It is therefore apparent on the face of record that on going through the facts stated in the complaint and the affidavit-cum-verification statement of the complainant, the Magistrate was satisfied to issue process. Learned Magistrate was inclined to direct police to conduct the investigation. The report of the investigation was submitted to the Magistrate. Learned Magistrate took into consideration the facts stated in the complaint and affidavit-cum-verification statement of the complainant and the police report. Based on this material the learned Magistrate came to the conclusion that forged document was created by the accused persons. Learned Magistrate also come to the conclusion that the facts stated in the report disclosed the commission of the offences, for which he ultimately pleased to issue process. The learned Additional Sessions Judge has taken all these facts into consideration. It is further pertinent to note that even if it is assumed that the verification statement of the complainant was not recorded in this case, in view of the report of the police officer indicating commission of offences, the order of issuance of process could not be said to be illegal. The judgment of the Karnatka High Court in the case of **Balangauda** (supra) relied upon by the learned

Additional Sessions Judge has crystallized the law on the issue. In my view, therefore, the argument on the point of *locus standi* of the complainant as well as on the other point cannot be accepted. The facts stated in the complaint and placed on record in the police report after due investigation, *prima facie*, makes out a case against the applicants/accused for issuance of process.

9. In the above backdrop, it cannot be said that the filing of a complaint and the order of issuance of process is misuse of provisions of law and process of the Court.

10. In my view, therefore, there is no substance in the application. Accordingly, the application stands rejected.

11. Professional fees of learned appointed advocate for non-applicant is quantified at ₹7,000/-.

JUDGE

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