

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

CRIMINAL WRIT PETITION NO. 116 OF 2021

Dr. Ashish Vishwas Rawandale Patil
Age: 48 years, Occu.: Urologist and
Secretary of Jawahar Medical Foundation Trust
R/o Tejnaksha Hospital Institute of Urology,
Sakri Road, Dhule, Tq. & Dist. Dhule

..PETITIONER

VERSUS

1. State of Maharashtra
Through Police Station Officer,
Dhule Taluka Police Station,
Dhule, Dist. Dhule

2. Rakesh Subhash Kakuste
Age: 34 years, Occu.: Service,
R/o 66/A, Panjrakhan Colony,
Sakri, Tq. Sakri, Dist. Dhule

..RESPONDENTS

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Mr. R.N. Dhorde, Senior Advocate i/b Mr. A.C. Darandale, Advocate for
petitioner

Mr. S.J. Salgar, A.P.P. for respondent no.1 – State

Mr. V.D. Hon, Senior Advocate i/b Mr. A.V. Hon, Advocate for respondent
no.2

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
RESERVED ON : 13th JULY, 2023
PRONOUNCED ON: 24th AUGUST, 2023**

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Heard finally at admission stage with consent of learned counsel
for the parties.

2. This writ petition, under Article 226 of the Constitution of India, has been filed for quashment of the First Information Report ('F.I.R.') being Crime No. 315 of 2020 registered with Dhule Taluka Police Station, Dist. Dhule for the offences punishable under Sections 406, 408 and 420 read with Section 34 of the Indian Penal Code and consequential charge-sheet being R.C.C. No. 78 of 2022 pending on the file of Chief Judicial Magistrate, Dhule.

3. The facts giving rise to the present petition are as under :-

There is a public trust viz. "Jawahar Medical Foundation" at Dhule ("Trust") registered under the Maharashtra Public Trusts Act, 1950 ('MPT Act'). Late Chudaman Ananda Patil was the common ancestor. He was survived by four sons viz. Bhaskar (deceased), Bhaidas (deceased), Rohidas and Vishwas (deceased). Both, Bhaidas and Vishwas were the founder trustees of the Trust. Bhaidas died in October 2022. He is survived by son Nehal and daughter Mamta (trustee). Nehal's wife – Sangita was also a trustee of the Trust. The petitioner is the son of deceased Vishwas. He is/was a Secretary-cum-Trustee of the Trust. Rohidas has three children viz. Vinay, Kunal and Smita. Kunal is a sitting Member of Legislative Assembly ('MLA') from Dhule Rural Constituency. Vinay is a working trustee. As such, the Trust has seven trustees including the petitioner herein.

4. The Trust runs a medical college, "Annasaheb Chudaman Patil Memorial Medical College, Dhule" ('ACPM Medical College'). It also runs

dental and medical colleges in the city of Dhule. The petitioner is a medical practitioner. He runs his own urology center viz. “Tejnaksh Hospital” at Dhule (previous known as “Institute of Urology”). The petitioner became Secretary of the Trust on demise of his father in 2006. He made a written complaint to the Admission Regulatory Authority regarding mismanagement in an admission process of the medical college and even misappropriation of college funds. He even filed an application under Section 41-A and 41-E of the MPT Act to have audit of accounts of the Trust. One Dr. Singhal was the Principal of the medical college. He resigned in October 2019. As there was a fall out among the family members, a false and concocted F.I.R. is alleged to have been lodged against the petitioner and one Bhambre, Accountant on 13th June, 2020. Registration of the F.I.R. was preceded by earlier F.I.R. dated 13th January, 2020 and other communication between the police authorities and the persons at the helm of affairs of the Trust.

5. The F.I.R. has been lodged by Respondent No.2 – Rakesh Kakuste, on an authorisation given by Chairman of the Trust in that regard. The gist of the averments/allegations in the F.I.R. dated 13th June, 2020 is that the petitioner and Bhambre (co-accused) used to purchase machineries and other instruments required for running of medical college. Three machines viz. (i) Dornier Lithotripsy machine worth Rs. 73,22,400/-; (ii) Dragor Anesthesia machine worth Rs.10,00,000/-; and (iii) Surgical Laser machine worth

Rs.56,70,000/-, were purchased by the petitioner for medical college of the trust, but installed all the three at his private urology center. This fact came into light in recent past.

6. Moreover, 24th October, 2018 was the day of election result of State Assembly. Kunal Patil (Vice-President) got elected. All the trustees and office bearers of the Trust were, therefore, present at the residence of Kunal Patil at 05:40 p.m. on that day. Associates of the petitioner unauthorisedly entered the premises of ACPM Medical College and took away various documents and files at the behest of the petitioner. An inventory of all those documents has been given in the supplementary statement given by the informant. It is also the case that a false and fabricated documents in the nature of Memorandum of Understanding ('MOU') was executed. In spite of being the Principal of the ACPM Medical College, Dr. Singhal was simultaneously employed by the petitioner with his urology center. Signatures of some of the staff members of the ACPM Medical College appearing on the MOU were either forged and/or obtained under duress. Statements of all those persons have been recorded. There is also material to indicate the petitioner to have had placed an order for purchase of Dornier Lithotripsy machine, way back in 2013. The said machine was directly installed at his urology center. Thus, the petitioner and Bhamble (co-accused) committed an offence of criminal breach of trust and allied offences.

7. Learned senior counsel for the petitioner would submit that since the petitioner brought to light the mismanagement, illegalities and even corruption in admission process of M.B.B.S. course, he has falsely been implicated in the crime in question. The Trust had applied for running a urology center in 2013-14. It however did not get permission. The Lithotripsy machine is only meant for use in urology center. All the aforesaid three machines were lying idle and catching rust. The Chairman of the Trust - Bhaidas Patil, therefore, authorised the petitioner to make use of those machines at his urology center. According to the petitioner himself, the Lithotripsy machine is such a huge as it cannot be moved from one place to another, except with the use of a crane. A written authorisation letter dated 17th April, 2014 was issued by the Chairman in this regard. There was an understanding between the petitioner's urology center and the Trust to have coordination between the two. A resolution passed way back in January 2000 was placed on record to indicate that the Trust agreed to provide the petitioner's urology center facilities of library, laboratory including hormonal studies and histopathological examination, blood bank and CT and MRI facilities to the patients and the D.N.B. trainees admitted at Institute of Urology, Dhule. Learned senior counsel also brought to our notice the earlier F.I.R.-cum-complaint dated 13th January, 2020 and communication between the police and office bearers of the Trust. According to him, in the said complaint the grievance was against the Principal Mr. Singhal. He has now

been excluded from the subsequent F.I.R. The Vice-Chairman of the Trust is a sitting MLA. He influenced the police authorities to have the crime registered against the petitioner. The petitioner on his own informed the concerned police officer existence of the aforesaid machineries and even produced them before the concerned police station. A copy of the order dated 10th February, 2023 passed by the Apex Court in Civil Appeal No. 966 of 2023 has also been relied on to indicate the students were admitted to the ACPM Medical College unauthorisedly. The Apex Court, therefore, penalised the Trust with a direction to deposit a sum of Rs.2.5 crores with All India Institute of Medical Sciences. The Trust served serious penal consequences considering career/fate of the students admitted to M.B.B.S. course unauthorisedly.

8. Learned senior counsel would further submit that the witnesses examined during investigation are employees of the Trust. There are glaring inconsistencies in the material collected in relation to the alleged incident of taking away valuable documents and files from the office of ACPM Medical College. According to senior counsel, launching of the prosecution against the petitioner is activated by malice / mala fides. Following judgments of the Apex Court have been relied on by the petitioner :-

- (i) ***Ahmad Ali Quraishi and Another Vs. State of U.P. and Another***
(2020) 13 SCC 435
- (ii) ***Sardar Ali Khan Vs. State of U.P. and Another***
(2020) 12 SCC 51

- (iii) *Bajjnath Jha Vs. Sita Ram and Another, (2008) 8 SCC 77*
- (iv) *Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, (2008) 8 SCC 82*
- (v) *Prashant Bharti Vs. State (NCT of Delhi), (2013) 9 SCC 293*
- (vi) *Madhavrao Jiwaji Rao Scindia and Another Vs. Sambhajirao Chadrojirao Angre and Others, AIR 1988 SC 709*

9. Learned A.P.P. and learned senior counsel representing the Trust would, on the other hand, submit that no extraneous material could be looked into. Admittedly, the three valuable machineries purchased for the medical college of the Trust were found at the petitioner's urology center. The Chairman of the Trust denied to have ever permitted the petitioner to use those machines. The authority letter allegedly given by the Chairman in that regard was adverted to. It was pointed out that it did not bear outward number. The said document has been submitted to a handwriting expert for examination of signature appearing thereon. The report is still awaited. Whatever the case of the petitioner has propounded is in the nature of his defence. Kunal Patil (MLA) belongs to the opposition party in the State. He, therefore, could not be said to have an influence over the police to have the crime investigated the way he desires. Certain statements of the persons working with the agency with which the order of Lithotripsy machine was placed, have been recorded. Same suggests the machine was directly received at urological center of the petitioner and installed thereat. According to learned counsel, a prima facie case to proceed against the

petitioner is thus made out. They, therefore, urged for dismissal of the petition.

10. Considered the submissions advanced. Perused the F.I.R. and related police papers.

11. In case of Ahmad Ali Quraishi (supra), it has been observed in paragraph nos.10 and 16 as follows :-

"10. Before we enter into facts of the present case and submissions made by learned counsel for the parties, it is necessary to look into scope and ambit of Inherent Jurisdiction which is exercised by the High Court under Section 482 Cr.P.C. This Court had occasion to consider the scope and jurisdiction of Section 482 Cr.P.C. This Court in State of Haryana and others versus Bhajan Lal and others, 1992 suppl. (1) SCC 335, had elaborately considered the scope and ambit of Section 482 Cr.P.C./ Article 226 of the Constitution in the context of quashing the criminal proceedings. In paragraph 102, this Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution/Section 482 Cr.P.C. by the High Court for quashing the criminal Proceedings. Paragraph 102 is as follows:- (SCC pp.378-79)

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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16. *After considering the earlier several judgments of this Court including the case of State of Haryana versus Bhajan Lal (supra), in Vineet Kumar (supra), this Court laid down following in paragraph 41: (Vineet Kumar case, SCC p.387)*

“41. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect: (SCC p. 379, para 102)

“102. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr.P.C. and quashed the criminal proceedings.”

12. For quashing of the F.I.R. and consequential proceeding in a charge-sheet, one has to go by averments in the F.I.R. and the papers of

investigation. Documents, which are not part of police papers but relied on by the petitioner seeking a relief of quashing, have to be of sterling quality.

13. Let us now turn to the factual matrix of the case. The Trust has been managed by members of a family. Two out of seven trustees are outsiders. The Trust was established way back in 1984. It admittedly runs medical, dental and nursing colleges in the city of Dhule. Father of the petitioner was one of the founder trustees. The petitioner became a trustee on demise of his father. Vice-Chairman of the Trust is a sitting MLA. It appears that all was well amongst the members of the family/trustees. It is true that in the year 2019-20, the petitioner made a complaint to the Admission Regulatory Authority alleging illegalities and even misappropriation of money in the admission process of MBBS course. He even filed an application under Sections 41-A and 41-E of the M.P.T. Act before the Joint Charity Commissioner, Nashik. On having been unsuccessful in the said application, he has preferred the first appeal, which is pending at Principal Seat of this Court. It is also true that ACPM Medical College admitted students for MBBS course in the year 2021-22 in spite of there being a restrained order. Only with a view to save career of the students admitted to MBBS course, the Supreme Court saved the admissions. The college has been directed to deposit a sum of Rs.2.5 crores with the All India Institute of Medical Sciences. The amount has been directed to be utilised at

the discretion of the Director, AIIMS for meeting the requirements of poor and needy patients. It has also been directed that the said amount shall not be recoverable from the students in any manner, whether for the present year or thereafter.

14. The petitioner may, therefore, appear to be an honest or a gentleman. The facts were prima facie suggest other way round. The petitioner runs his own urology center at Dhule. All was not well between him on one hand and the trustees on the other. A complaint was lodged with Dhule Police Station on 13th January, 2020. It was specifically against Dr. Singhal, the then Principal of ACPM Medical College and impliedly against the petitioner herein. Averments therein pertain to the Principal about not returning files/valuable documents besides certain costly equipments. It appears that no crime based on the said report was registered and enquiry therein was made. True, at the relevant time the Vice-Chairman of the Trust was a sitting MLA from Dhule Rural Constituency. We are here concerned with the F.I.R. dated 12th June, 2020. It has been lodged by a person authorised by the Chairman of the Trust. The allegations therein are that the three machineries viz. Dornier Lithotripsy, Dragor Anesthesia and Surgical Laser were purchased by the petitioner and the co-accused for the Trust but installed in the petitioner's urology center. It has also been alleged that on 24th October, 2018 helpers of the petitioner unauthorisedly took away certain

files and valuable documents, inventory whereof has been given in the supplementary statement of the informant. It is also alleged that Dr. Singhal forged/ fabricated the document in the nature of MOU indicating understanding between the petitioner's urology center and the Trust/ACPM Medical College. Dr. Singhal appears to have been given clean chit. He is not an accused in the case. True, he served the Trust for over twenty-five years and had to resign. He was a Principal of the ACPM Medical College for about one year before he put in his papers. It is however, an admitted fact that Dr. Singhal was a visiting faculty at the petitioner's urology center and even would use to look after some of its affairs.

15. So far as regards the incident of alleged unauthorised taking away of the files and valuable documents on 24th October, 2018 is concerned, the same appears to be a false or incorrect, since statements of the witnesses, who claim to have witnessed the said fact although claim to have reported the said incident to the persons at the helm of the affairs of the Trust same day, the said fact is conspicuously absent in his report dated 13th January, 2020.

16. The question is mainly as to misappropriation of the aforesaid three machineries. Admittedly, those machineries were purchased way back in 2013-14. The Dornier Lithotripsy machine is required for running of a urology center. It is the case of the petitioner that the Trust had applied in

2014 for permission to run a urology center, but the permission was turned down. It is surprising to imagine that the Trust without permission to run urology center goes for purchasing the Dornier Lithotripsy machine worth Rs.73,22,400/-. There is nothing on record to suggest the Trust had really asked for permission and the same was turned down in the relevant year. The case of the petitioner is in the nature of his defence. It is true that the petitioner, alongwith Chairman and the Vice-Chairman had financial authorities. It is also true that the cheques bearing signatures of these three were issued towards payment of purchase of these machineries/equipments. It being a Trust running number of colleges necessarily require the other two machines. It is just illogical to imagine that the Chairman of the Trust vide his alleged letter dated 17th April, 2014 permits taking away all these three machines/equipments since those were lying idle / catching rust. The petitioner is harping upon the authority letter issued by the Chairman of the Trust. The said letter does not bear outward number. On the face of it, the same appears to be a suspicious document. Investigating officer has sent it to an handwriting expert for his opinion to find whether it was really issued by the Chairman of the Trust. The handwriting expert's report is still awaited. Here again it is to be stated that it is the case of the petitioner's defence. The Chairman of the Trust has flatly denied to have ever issued such a letter on his letterhead. It is true that way back in 2009 a resolution was passed by the trustees at the request of the Institute of Urology to provide the petitioner's

institute facilities of library, laboratory including hormonal studies and histopathological examination, blood bank and CT and MRI facilities to the patients and the D.N.B. trainees admitted at urology center.

17. During enquiry of the first report dated 13th January, 2020, the petitioner ought to have come clean admitting to have been making use of the aforesaid three machineries/equipments. The said report contains description of some other three equipments. Although the payment was made by the three, who were authorised to do financial affairs and even in the balance-sheet of the Trust, depreciation of the machineries purchased has been shown. It is to be taken that the Trust runs many colleges. Whatever assets it possesses, a depreciation in the usual course of its financial year is credited. There are documents on record to indicate a communication between the vendor of Dornier Lithotripsy machine and the petitioner alone. The communication was addressed to the petitioner in his capacity as Head of his own urology center. There is also statement of the supplier of Dornier Lithotripsy machine that the same was delivered to the petitioner at Dhule and his men installed the same at petitioner's urology center.

18. As such, the material on record prima facie suggest the aforesaid costly three machineries, though purchased for ACPM Medical College of the Trust, were exclusively used by the petitioner at his urology center. It

appears that at the relevant time, the petitioner was also at the helm of affairs. He appears to have misused his position as a Trustee-cum-Secretary. The Dornier Lithotripsy machine was purchased even without there being a permission for the Trust to run an urology center. The supplier of the said machine/equipment had communication with the petitioner in his individual capacity and as head of Tejnaksha Urology Center. We fail to understand as to why and how such costly equipment was purchased without there being permission to run an urology center, in hand. Whatever case the petitioner has come with is necessarily in the nature of his defence. Although the aforesaid three machineries have now been returned by him, the fact remains that for over six years the machineries were with him and had the report not been lodged, the alleged offence might not have come to light. In our view, it is not a fit case to grant the petitioner relief of quashing of F.I.R. and consequential charge-sheet, although all is not well amongst the trustees/family members including the petitioner and only after fall out, the report of the incident came to be lodged.

19. For all the aforesaid reasons, criminal writ petition fails. Same is, therefore, dismissed.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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