

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

26 CRIMINAL WRIT PETITION NO.353 OF 2021

Shubhangi Lotan Bedse, **...PETITIONER**
Age-45 years, Occu- Service,
R/o. Adarsh Nagri, Sakri,
Tq. Sakri, Dist. Dhule

VERSUS

1. Dr. Sau. Binatai Subhash Bhamre, **...RESPONDENTS**
Age-66 years, Occu-Doctor,

2. Dr. Subhash Ramraio Bhamre,
Age-68 years, Occu-Doctor,

Both R/o. Ram Surgical Hospital,
80 Ft. Road, Dhule, Disdt. Dhule

3. The State of Maharashtra

Mr. Sachin S. Deshmukh, Advocate for the petitioner
Mr. Mukul S. Kulkarni, Advocate for respondent Nos. 1 and 2

CORAM : KISHORE C. SANT, J.

DATE : 21st FEBRUARY, 2023

JUDGMENT:

1. Heard the learned advocates for the parties.

2. Rule. Rule made returnable forthwith by consent of

the parties.

3. By this petition, the petitioner has challenged the judgment and order passed by the learned Sessions Judge, Dhule dated 17-08-2019 in Criminal Revision Application No. 126/2017 by which the revision of respondent Nos.1 and 2 came to be allowed by quashing the process issued by the learned JMFC, Sakri in SCC No. 55/2010.

4. The facts, in short are that, the present petitioner is working in the school run by Vidya Vikas Mandal, Sakri as a teacher. She was terminated from service and therefore had filed an appeal in the school tribunal for reinstatement and other consequential reliefs. The learned school tribunal passed an order and directed to reinstate the petitioner with backwages. Said judgment was carried to this court and thereafter to the Hon'ble Apex Court wherein the parties entered into compromise on 15-02-2014. The present petitioner gave up her claim to the backwages and accepted that she will get salary

after obtaining formal approval from the concerned Education Officer. In the compromise to the extent of relief regarding reinstatement and continuity of service was maintained as it is. On 24-02-2014 the Hon'ble Apex Court passed an order accepting the terms of compromise.

5. In the meantime, the petitioner had already filed a complaint under Section 13(1) of the MPES Act against the present respondents and other members of the society for taking criminal action for not obeying the order passed by the tribunal in an appeal. In the present complaint present respondents and others filed an application below Exh.97 in the complaint seeking stay to the proceeding. However, same was rejected by the learned trial court. The order of the trial court was challenged by the filing criminal writ petition No. 1520/2016 in this court. This court vide order dated 20-01-2017 disposed off the criminal writ petition. While disposing off the petition this court observed that the petitioners are avoiding their liability and the petition was held to be misconceived.

6. Respondent Nos. 1 and 2 on receipt of process filed a criminal revision application bearing No. 126/2017 in the court of learned Sessions Judge, Dhule stating that these petitioners were in the trust for the year 2007 to 2010 and when complaint was filed they were not the persons in-charge of the trust and were not responsible for day-to-day affairs of the trust/society. It also came to be challenged on the ground that there is no specific averment in the complaint stating that they are responsible for the day to day affairs of the trust. The learned Sessions Judge by accepting these grounds allowed the revision application by his judgment and order dated 17-08-2019. The present petitioner aggrieved by this order is before this court.

7. Learned advocate for the petitioner vehemently argued the matter. He invited attention to the definition of the Management given in section 2(12) of the MEPC Act which defines management as below:

Section 2(12): "Management" in relation to a school, means:

*(a) in the case of a school administered by the State Government, the Department:
(b) in the case of a school administered by a local authority, that local authority; and
(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school;*

8. Thus he submits that looking to the clause (C) it is clear that every body of the persons is termed as Management and since when the complaint was filed before the school tribunal these respondents were very much in the office and therefore, they are liable for action under Section 13(1) since trust has failed to comply with directions of the school tribunal. He further submits that this court in writ petition No. 1520/2016 has clearly held that these petitioners are trying to avoid their liability and therefore in the light of observation by this court it was not open for the Sessions Court to observe that the respondents are not liable for the action.

9. Learned advocate for the respondent submits that it is only such persons who are responsible to obey the order can

be shown as respondents in criminal complaint. He further submits that in fact when the order for implementation of order of which the complaint is filed itself has merged into the order passed by the Hon'ble Apex Court in view of the compromise. In any case the petitioner has given up the claim of backwages and now in view of the compromise in the Supreme Court it is the petitioner who has accepted that she will get salary only after obtaining the formal approval from the concerned Education Officer. He submits that thus unless salary is approved from the concerned Education Officer she will not get salary and in any case i.e. not in hands of the respondents. Thus for the reasons that they are not in the office they cannot be held liable. He submits that it was necessary for the complainant to specifically submit that it was necessary for the complainant to make averments that this respondents are responsible for day-to-day affairs. He submits that the learned Sessions Judge has rightly passed an order and supports the same.

10. He also submits that for getting approval from

Education Officer a petition is also filed in this court. Learned advocate however, pointed out that the petition is filed only after filing of a complaint. However, this court finds that in any case it is only for the Education Officer to grant approval and it is not in the hands of the respondent.

11. Considering this aspect this court finds that it is well settled that for fastening the criminal liability upon the person there has to be specific averment as regards liability and responsibility of the person when a complaint is filed against the society/trust or against any juristic person. In this case, though it is argued that this court in criminal writ petition No. 1520/2016 has made observations that petitioner therein including present respondent Nos. 1 and 2 in this case were trying to avoid the liability as per the terms of settlement, however, that cannot be taken to be finding recorded by this court. Since it was not an issue before the court in the said petition. There an order passed on application Exh.97 by the learned trial court was under challenge. As it is such observations cannot be taken restraining

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any person from seeking further remedies available under law. Secondly order in writ petition No. 1520/2016 does not appear to have been shown to revisional court by any of the parties. Under such circumstances, no fault can be found in the judgment and order passed by the learned Additional Sessions Judge and for this reasons this court finds that no interference is called for in the impugned order and therefore, the rule stands discharged. The criminal writ petition stands dismissed and disposed off.

[KISHORE C. SANT, J.]

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