

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 439 OF 2020

1. Smt. Sangita W/o Vijayprakash Thombre
Age : 43 years, Occu : Social Work,
2. Vijayprakash S/o Kishanrao Thombre
Age : 56 years, Occu : Agriculture and
Chairman of Loknete Gopinathrao Mundhe
Magasvargiya Sahakari Soot Girni Maryadit,
Kaij, Tq. and Dist. Beed

.. Petitioners

Versus

1. The State of Maharashtra,
Through Police Inspector,
Kaij Police Station,
Tal : Kaij, Dist. : Beed
2. Shri. Ganpati S/o Sainappa @ Sonappa Kamble
Age : 71 years, Occu : Agriculture,
R/o : Ladegaon, Tq. : Kaij,
Dist. : Beed

.. Respondents

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Mr. V.D. Sapkal, Sr. Advocate i/b.Mr. Amol B. Chalak, Advocate for petitioners
APP for the respondent – State : Mr. G.O. Wattamwar
Advocate for the respondent no. 2 : Mr. S.G. Jadhavar

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 3 APRIL 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the petition is heard finally at the stage of admission.

3. By invoking the powers of this Court under section 482 of the Code of Criminal Procedure read with Article 226 of the Constitution of India, the petitioners who are the husband and wife are seeking quashment of crime no. 410 of 2019 registered with Kaij Police Station, Taluka Kaij, District Beed for the offences punishable under section 199, 200, 420, 466, 467, 468, 471, 477 r/w. 34 of the Indian Penal Code.

4. The respondent no.2 approached the Magistrate soliciting the order under section 156(3) of the Code of Criminal Procedure and on the basis of the order passed by the learned Judicial Magistrate First Class, the crime was registered.

5. The FIR in substance is to the effect that the petitioner no. 1 is the member of legislative assembly of the State and as a chief promoter, set up a spinning mill under the chairmanship of petitioner no. 2 in the year 2015. It is alleged that without consent of the respondent no. 2 and couple of other individuals whose statements were subsequently recorded under section 161 of the Code of Criminal Procedure even when they had never applied for becoming members and without having paid necessary membership fees, by indulging in forgery and by putting forged signatures a proposal was submitted to the Regional Deputy Director (Textiles), Aurangabad and Nagpur while

registering the society. After realizing about such forgery when he approached the petitioners on 03-06-2019 the petitioners turned him away. It is alleged that rampant misdeeds are occurring in the society and since he has been shown as a member and director without his consent and by resorting to forgery, he is likely to be roped in such misappropriation. It is also mentioned that even before approaching the Court he undertook examination of his genuine signatures and the signatures appearing against his name in the proposal submitted to the Textile department. It was certified that the signatures were bogus.

6. Learned Senior Advocate Mr. Sapkal would submit that the petitioners are being roped in due to politics. There are no sufficient and cogent circumstances revealing their complicity much less making out the ingredients for constituting all the afore-mentioned offences. It would be abuse of the process of law if they are made to face the prosecution. It is not that there was a mere proposal for formation of the spinning mill. The subsequent conduct of the election and constitution of new managing committee and smooth running of the society for a considerable period was indicative of the fact that the respondent no. 2 himself even admitted his status as a member of the managing committee which elections took place in the year 2016. Since the respondent no. 2 could not get caste validity certificate, his name was automatically deleted since it was a society wherein as per the Government guidelines 70% members were expected to be

belonging to the scheduled caste category to receive the Government grants. Aggrieved thereby, he has concocted the allegations.

7. The learned APP and the learned advocate for the respondent no. 2 submits that there is *prima facie* material revealing complicity of the petitioners in commission of the crime. Without there being any consent, application for membership or payment of any membership fees, a proposal was submitted mentioning the names of the respondent no. 2 and couple of other individuals while getting the society registered. It is a clear case of forgery. The respondent no. 2 has obtained opinion of a handwriting expert which corroborates his version. Statements of not only the respondent no. 2 but few other witnesses have also been recorded who have clearly stated their names having been included without their knowledge or consent and without being the members. At this juncture, there is enough material to make out the ingredients for the offences. The chargesheet has been filed and the prosecution deserves to be extended fair opportunity to establish the charge.

8. Learned advocate for the respondent no. 2 would also tender across the bar communication addressed by the Assistant Commissioner, Social Welfare, Beed to the Divisional Deputy Commissioner of the Social Welfare Department, Aurangabad dated 24-12-2019 expressly informing about having undertaken the enquiry

into the allegations of registration of the society by resorting to forgery on a complaint filed by one Mahadeo Balasaheb Gholve wherein it has been specifically mentioned that the list of board of directors and the list of members was solicited from the office of the Regional Deputy Commissioner (Textiles) Aurangabad but it has informed that no such list of directors and members was ever certified by it.

9. It is necessary to bear in mind that the powers of this Court to quash a criminal case are circumscribed by several consideration. The law is trite. *State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604* is often quoted judgment which lays down the parameters.

10. Recently in the matter of *Mahendra K.C. Vs. State of Karnataka and another; (2022) 2 SCC 129* the scope of the powers to quash a crime and criminal case are reiterated stating that those are to be used sparingly and in rare cases. Referring to the earlier decisions in the matter of *State of Orissa Vs. Saroj Kumar Sahoo; (2005) 13 SCC 540*, *State of M.P. Vs. Surendra Kori; (2012) 10 SCC 155*, the following observations have been made :

“19. *The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well settled. In State of Orissa v. Saroj Kumar Sahoo, a two-Judge Bench of this Court, observed that:*

“8. ... While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent

jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."

20. *These principles emanate from the decisions of this Court in State of Haryana v. Ch. Bhajan Lal and State of M.P. v. Surendra Kori. In Surendra Kori (supra), this Court observed:*

"14. The High Court in exercise of its powers under Section 482 CrPC does not function as a Court of Appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material."

Pertinently, even the decision in the matter of State of *Bhajan Lal* (supra) has been relied on in paragraph no. 21.

11. If we proceed bearing in mind these principles, it is clear from the chargesheet that the allegations being levelled by the respondent no. 2 are *prima facie* corroborated by the material which is

sufficient to reveal the fact that the petitioners have indulged in forgery. It is not that the respondent alone is putting up the grievance but even there are statements of other witnesses as well. Apart from the respondent no. 2, statement of Sachin Bhimrao Chavan clearly mention that proposal was submitted for registration of the society promoted by the petitioners mentioning their names but without their consent and signatures and without there being any application moved by them or even paying any membership fees.

12. Conspicuously, statements of several other persons who were similarly shown to be directors and members in the same proposal have been recorded under section 161 of the Code of Criminal Procedure. Though they have stated that their signatures are genuine and in spite of having stated that they were aware that the respondent no.2 was raising a dispute and alleging that his signature is forged one, none of these directors or members have expressly stated about the respondent no.2 having placed his signature on the proposal or that the signature appearing against his name is his genuine signature. They have also not stated about the respondent no. 2 having by his subsequent conduct participated in the affairs of the society at any point of time.

13. Apart from the above state-of-affairs, the respondent no. 2 has expressly mentioned about having obtained an expert opinion

regarding his genuine signature and the signature appearing on the proposal. It is necessary that the matter is allowed to be tried by the Magistrate which would enable recording of the evidence and reaching a conclusion objectively.

14. In our considered view, the above mentioned circumstances are relevant and cogent enough to *prima facie* show that there is substance in the allegations regarding the alleged forgery and using of forged document to get the society registered which are necessary ingredients for constituting the offences. The case does not fit in any of the parameters laid down in *Bhajan Lal* (supra).

15. The writ petition is dismissed. Rule is discharged.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/