

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

961 CRIMINAL APPLICATION NO.1231 OF 2023

Walmik Eknath Kakad

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Suraj Babudas Vaishnav

..RESPONDENTS

...

Advocate for Applicant : Mr. Narwade Narayan B.

APP for Respondent/State : Mr.A.R. Kale

Advocate for Respondent No.2 : Mr. Kadethankar Ajit B.

.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 13th OCTOBER, 2023.

PER COURT :-

1. Heard.

2. This application has been moved for quashing of the First Information Report (FIR) being Crime No. 0122 of 2023 registered with MIDC CIDCO Police Station, Aurangabad, Tq. & Dist. Aurangabad for the offences punishable under sections 420, 468, 471 r/w 34 of the Indian Penal Code.

3. In short, the case of the prosecution is that written examination for the post of Assistant Civil Engineer was held from 31.01.2022 to 09.02.2022. Accused no.1 (co-accused), who is not

before us, has a benchmark disability. He filled in the form for the post of Assistant Civil Engineer. Since he was handicapped, the rules permitted him to engage or avail services of a scribe. As per the rules, it was for him (accused no.1) to give an undertaking in a prescribed format. Accordingly, he submitted the undertaking as under :-

“I do hereby state that _____ (name of the scribe) will provide the service of scribe/reader/lab assistant for the undersigned for taking the aforesaid examination.

I do hereby undertake that his qualification is _____. In case, subsequently it is found that his qualification is not as described by the undersigned and is beyond my qualification, I shall forfeit my right to the post and claims relating thereto.”

4. Learned APP and the learned advocate for the MHADA/informant have strong reservation to grant relief. According to them, the investigation is in progress. The applicant in fact appeared for the examination knowing fully well that he should not have appeared, being a graduate in Engineering stream.

5. As per rules and regulations, neither the undertaking nor any kind of bond or anything was to be given by the scribe, who was

engaged to write a paper for disable candidate. In the case in hand, the present applicant being graduate in Engineering stream was engaged to appear for the said examination, but from him no undertaking was obtained nor his qualification was got known from him.

6. It is true that the present applicant being a graduate in Engineering stream ought not to have appeared for the said examination. It was the co-accused, who played a mischief. He engaged the present applicant as a scribe for Engineering examination. He is not before us.

7. Since the present applicant was not under statutory obligation to disclose the authorities concerned, either in writing or orally his educational qualification, he can not be said to have committed the crime. It is informed that the present applicant has been selected as Accounts Assistant with Indian Railways and pendency of this proceedings comes in his way. We, therefore, in exercise of inherent powers allow the application.

8. It is informed by the learned advocate for the applicant that the applicant has also been selected for the post of Junior Clerk with the MHADA. He specifically makes a statement that applicant forgoes his selection for the post in MHADA.

9. In view of the above, particularly in the interest of justice, we allow the application in terms of prayer clause "B".

10. It is made clear that this order can no way be availed by co-accused (accused no.1) to claim parity.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

sga/