

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

CRIMINAL APPLICATION NO.1227 OF 2000

DEVIDAS GOVINDA PHALAK AND OTHERS
VERSUS
ANIL PREMRAJ JAWALE

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Mrs. Manjusha Jagtap, Advocate for the Applicants.

Mr. K. S. Patil, APP for the Respondent-State.

Mrs. Rashmi S. Kulkarni h/f Mr. S. D. Kulkarni, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th SEPTEMBER, 2023.**

PER COURT:-

1. The present Criminal Application is filed impugning the order dated 04.04.2000, by which the learned Additional Sessions Judge has restored Regular Criminal Case No.50/1998 that was dismissed at the stage of issuance of process with further directions to learned Judicial Magistrate First Class, Bhusawal to proceed with the complaint case in accordance with law.

2. The Applicants nos.2 and 3 are members of the Executive Committee, applicant no.4 is Principal of the college and applicant no.5 is Registrar. The respondent was employee of the college. He alleges that under so called Resolution dated 05.06.1997 purported to be passed by the Executive Committee, he was suspended for alleged misconduct. The departmental enquiry was directed for alleged misconduct against the him. The Enquiry Officer submitted report and recommended his dismissal from service. Accordingly, his services were terminated with effect from 31.12.1998.

3. The aforesaid order of dismissal/termination from the service was challenged by respondent before the University and College Tribunal, Aurangabad vide Appeal No.NMU-1 of 1999. The Tribunal allowed appeal and order of suspension as well as termination of respondent came to be set aside. The Society challenged the aforesaid order in Writ Petition No.5049/1999 before this Court. The Writ Petition has been admitted and by way of interim relief, the order of the Tribunal is stayed.

4. The respondent approached the learned Judicial Magistrate First Class at Bhusawal by filing private complaint alleging that the Resolution dated 02.06.1997 is manipulated/fabricated document. No meeting of executive committee was conveyed on that day nor Resolution was passed. However, the false document had been was prepared to depict resolution suspending services of petitioner and it was made part of the enquiry, so also it was relied before enquiry officer the Tribunal.

5. The complainant recorded his evidence before issuance of process. However, after considering the evidence on record and provisions of Section 195(1)(b)(ii) of Criminal Procedure Code, the learned JMFC concluded that since allegations in the complaint are made regarding use of the forged documents in proceeding before the Court, the complaint needs to be filed in writing by that Court only. In that view of the matter, vide order dated 04.05.1999 the learned JMFC dismissed the complaint. The respondent/original complainant approached the Sessions Court, Jalgaon vide Criminal Revision Petition No.196/1999, impugning the order of dismissal of the complaint. The learned Sessions judge allowed the Revision Petition vide

order dated 04.04.2000 and restored the Regular Criminal Case No.50/1998 to the file on the stage on which it was dismissed with further direction to the learned JMFC to proceed with the complaint case in accordance with law. The aforesaid order passed by the learned Sessions Judge in Criminal Revision Petition No.196/1999 is subject matter of challenge in the present Criminal Application filed U/S 482 of the Criminal Procedure Code.

6. In pursuance of order of sessions court proceeding in complaint is restored and learned JMFC, after hearing the parties, called for the report under Section 202 of the Criminal Procedure Code. The report clearly depicts that no such meeting was held on 02.06.1997. Relying upon the report of the enquiry filed by the police officer and statement of complainant on oath, the learned JMFC issued process against the accused persons vide order dated 27.06.2000.

7. Mrs. Jagtap, learned Advocate appearing for the applicants would submit that Resolution dated 02.06.1997 is alleged to be forged document. It was placed before the enquiry officer during the Departmental Enquiry initiated against the respondent. On conclusion of the enquiry, the respondent was dismissed from service. The said dismissal was subject matter of challenge before the University and College Tribunal at Aurangabad and presently it is subject matter of Writ Petition No.5049/1999, which is admitted by this Court. She would submit that in view of the provisions of Section 195(1)(b)(ii) of the Criminal Procedure Code, no complaint could be entertained, unless it is filed by the Presiding Officer of the Court before whom forged document was presented in proceeding. She would submit

that an independent private complaint could not have been entertained in the facts of the case. She would submit that even the Enquiry Officer, who is conducting the Disciplinary Proceeding in pursuance of the powers conferred under Maharashtra Universities Act, Statute and Ordinance will have to be construed as Court within the meaning of Section 195 of the Criminal Procedure Code. She would further submit that the document was subject matter of the proceeding before the Tribunal as well as pending Writ Petition before this Court. Hence, as long as the document in question is subject matter of consideration in the Writ Petition, learned JMFC cannot take cognizance of complaint filed by the respondent in view of the mandate under Section 195(1)(b)(ii) of the Criminal Procedure Code. She would, therefore, submit that the learned JMFC was right in dismissing the complaint under Section 203 of the Criminal Procedure Code vide order dated 04.05.1999. However, the learned Sessions Judge, Jalgaon erroneously restored the complaint by setting aside well-reasoned order of the learned JMFC. She would, therefore, urge to allow the present application and set aside the order passed by the Sessions Court.

8. Per contra, Mrs. Kulkarni, learned Advocate appearing for the respondent would support the order passed by the Sessions Court. She would submit that the forged document in the nature of Resolution dated 02.06.1997 has been prepared and it was used before the Enquiry Officer during the Departmental Enquiry. She would, therefore, submit that the offence under Section 463 of the Indian Penal Code has been committed prior to institution of the proceeding before the Enquiry Officer. In that view of the matter, there is no

impediment in filing the private complaint before magistrate against the accused persons. She would submit that the Enquiry Officer appointed by the management in the nature of fact-finding committee cannot be given status of Court for purpose of Section 195(1)(b)(ii) of the Criminal Procedure Code. She would, therefore, submit that the bar of lodging private complaint would not attract in facts of the present case. She would place reliance on Larger Bench judgment of the Supreme Court of India in the matter of ***Iqbal Singh Marwah and Ors. Vs. Meenakshi Marwah and Ors.***¹. She would submit that similar controversy regarding interpretation of Section 195(1)(b)(ii) of the Criminal Procedure Code has been answered by the Larger Bench. It is concluded that if the document is prepared and presented in the Court proceeding by way of evidence, there is no impediment in prosecuting accused persons in private complaint before magistrate. The bar created under Section 195(1)(b)(ii) of the Criminal Procedure Code would not attract in such case and the Court before whom the complaint has been filed is well within authority to take cognizance of the complaint.

9. Having considered submissions advanced, the contentious issue that arises for consideration before this Court is whether in view of the bar under Section 195(1)(b)(ii) of the Criminal Procedure Code, the private complaint filed on behalf of the respondent, alleging fabrication/forgery of the Resolution dated 02.06.1997 can be entertained by Magistrate, particularly, when such document was presented in Departmental Enquiry, the Appeal before the Tribunal and Writ Petition filed before this Court. It is not in dispute that the respondent has filed complaint

1 (2005) 4 SCC 370.

before the learned JMFC with specific allegation that during the course of Departmental Enquiry, a Resolution dated 02.06.1997 purported to be passed in the meeting of the Executive Committee had been placed on record and relied on behalf of accused persons. Similarly, the false proceeding of such meeting has been prepared by the accused persons. Respondent alleges that, although no meeting of the Executive Committee took place on 02.06.1997, accused persons have falsely depicted that such meeting was conducted during which the so-called Resolution is shown to be passed. The respondent examined himself before the learned JMFC, wherein he has reiterated that accused nos.1 to 5 made false proceedings and resolution depicting decision of executive council of management.

10. Admittedly the said document was placed on record of Departmental Enquiry, which lead to dismissal of the respondent from service. The order of dismissal was then subjected to the challenge before the University and College Tribunal, Aurangabad in an Appeal filed under Section 59 of the Maharashtra Universities Act. In aforesaid background, whether bar under Section 195(1)(b)(ii) of the Criminal Procedure Code attracts or not is the question before this Court. The controversy is no more *res-integra*. Pertinently, there were divergent views in the two decisions of the Supreme Court of India in the matter of ***Surjit Singh Vs. Babbir Singh***² and ***Sachida Nand Singh Vs. State of Bihar***³. The issue was referred to the Bench of Five Judges. The following point was framed for consideration:

“On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible

² 1996 (3) SCC 533.

³ 1998 (2) SCC 493.

interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.”

11. After considering the relevant provisions of law and various pronouncements on the issue, the view taken in the ***Sachida Nand Singh*** case (*supra*) has been approved with concluding note which reads thus:

“In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.”

12. Considering the aforesaid conclusion of the Larger Bench of the Supreme Court of India, it is no more *res-integra* that if offences enumerated in the provisions of Section 195(1)(b)(ii) of the Criminal Procedure Code have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in ‘custodia legis’, the bar under Section 195(1)

(b)(ii) of the Criminal Procedure Code would attract. Admittedly, in the present case, the document itself was prepared prior to initiation of the Departmental Enquiry and same is alleged to have been used during that proceeding. In that view of the matter, the respondent is well within his right to invoke jurisdiction of JMFC by way of private complaint, who is empowered to take cognizance of such offences and proceed against the accused. In the present case, the learned JMFC issued process after considering the averments in the complaint, which are supported by the oral evidence of respondent no.2, so also police report under Section 202 of the Criminal Procedure Code.

13. In that view of the matter, there is no merit in the Criminal Application and the same is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE