

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1445 OF 2021

Kalyan Baliram Rathod & others

Applicants

Versus

The State of Maharashtra & another

Respondents

Mr. C. V. Thombre, Advocate for the applicants.

Mr. M. M. Nerlikar, APP for the State.

Mr. Zardi Ali Zeeshan M., Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

DATE : 16th JANUARY, 2023.

PER COURT :

1. With consent, heard finally at the stage of admission.

2. The applicants herein have filed this application under Section 482 of the Code of Criminal Procedure to quash First Information Report No. 46/2021 registered with Kranti Chowk Police Station, Aurangabad and the consequent charge-sheet/RCC No. 2904/2021 pending before the learned Chief Judicial Magistrate, Aurangabad, for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

3. Heard learned counsel for the applicants, learned APP for the State and learned counsel for respondent No. 2. We have perused the record and considered submissions advanced by learned counsel for the respective parties.

4. It is sought to be contended that though the Magistrate had ordered registration of crime under Section 420 of the Indian Penal Code, the final report includes sections 468 and 471 of the Indian Penal Code. It may be noted that Section 156 of the Code of Criminal Procedure deals with powers of the police to investigate a cognizable offence. However, when police authority fails to register the crime or fails to conduct proper investigation, Section 156(3) empowers the Magistrate to direct the officer in charge of the concerned police station to investigate in crime. The powers under Section 156(3) of the Code of Criminal Procedure can be exercised at precognizance stage when the Magistrate is satisfied that prima facie cognizable offence is made out. It is for the investigating agency to decide whether or not particular offence is made out and submit the Report accordingly. Investigation of an offence is within the domain of the investigating agency and the Magistrate cannot restrict the powers of the investigating agency by directing the investigating

agency to register the First Information Report for a specific crime. Respondent No. 2 herein had filed an application under Section 156(3) of the Code of Criminal Procedure before the learned Judicial Magistrate First Class, Aurangabad. The learned Magistrate, by order dated 29th January, 2021, under Section 156(3) of the Code of Criminal Procedure directed registration of crime under Section 420 read with Section 34 of the Indian Penal Code. The order, though not happily worded, indicates that the Magistrate was prima facie satisfied that cognizable offence under Section 420 of the Indian Penal Code was made out and hence ordered registration of the crime, the object of which was to put investigation in motion. Pursuant to these directions, the First Information Report being Crime No. 246/2021 has been registered and upon completion of investigation, charge-sheet came to be filed for offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

5. The applicants have sought to quash the First Information Report, charge-sheet as well as criminal prosecution (RCC No. 2904/2021) emanating therefrom on the ground that the First Information Report as well as the other material collected

during the course of investigation does not disclose cognizable offence as against them. Perusal of the record reveal that applicant No. 1 is the President of Balirm Naik Shikshan Prasarak Mandal and applicants No. 2 and 3 are the siblings of applicant No. 1. The applicants No. 2 and 3 are the employees of residential ashram school at Thaptitanda. Respondent No. 2 claims that a resolution was passed in the year 2007 to appoint him as Sports Teacher. He claims that pursuant to the said resolution, he was appointed as a Sports Teacher and that he joined duties with effect from 14th June, 2007. Respondent No. 2 further claims that he subsequently joined a Corporation School. He continued to work as Sports Teacher till the year 2011. He lodged First Information Report in the year 2021 with grievance that despite the resolution and the appointment order of the year 2007, appointing him as Sports Teacher, the applicants subsequently prepared a backdated order showing his appointment as Lab Assistant. This according to the Respondent No. 2 amounts to cheating and creation of false and fabricated documents.

6. The First Information Report and other records do not disclose element of deception and fraudulent or dishonest inducement. Hence, the grievance of respondent No. 2, that he was

entitled to be appointed as Sports Teacher since the year 2007, even if accepted to be true and correct, it would not constitute offence of cheating within the meaning of Section 415 of the Indian Penal Code.

7. Section 468 prescribes punishment for committing forgery with intention to use the document for the purpose of cheating whereas Section 471 prescribes punishment for using a forged document as a genuine document. Learned counsel for respondent No. 2 as well as learned APP concede that respondent No. 2 was not issued any appointment order appointing him as a Sports Teacher. The essential ingredient of both these sections is forgery. The term 'forgery' as defined in Section 463 means making a false document with intent as specified in the section. In the instant case, there are no allegations or material on record to indicate that the appointment letter appointing respondent No. 2 as a Lab Assistant was prepared with an intention to cheat or that it was prepared with an intention to commit injury or damage to him or to commit fraud. The essential ingredients of Sections 468 and 471 are not made out. Hence, even if the First Information Report as well as other material on record even if accepted as true and correct in their entirety, do not disclose offence of forgery or fabrication. It is stated that respondent

No. 2 has already filed a petition challenging termination order and the same is pending. In our considered view a dispute relating to service matter has been given a cloak of criminal offence. In the circumstances, continuance of criminal proceeding will be a sheer abuse of process of the Court.

8. Hence, the application is allowed in terms of prayer clauses 'B' and 'B1'. Consequently, First Information Report No. 46/2021 dated 31st January, 2021 registered with Kranti Chowk Police Station, Aurangabad and RCC No. 2904/2021 pending on the file of learned Chief Judicial Magistrate, Aurangabad for offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, stand quashed qua the applicants.

(R. M. JOSHI)
Judge

dyb

(SMT. ANUJA PRABHUDESSAI)
Judge