

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 868 OF 2022

1. Iqbal Ahmed Khan s/o Abdul Rasheed Khan
Age : 65 years, Occ.: Pensioner,
R/o: Gulzar Colony, Parbhani Dist. Parbhani.
2. Mustaque Ahmed Khan S/o Iqbal Ahmed Khan
Age : 38 yaers, Occ.: Business,
R/o: Gulzar Colony, Parbhani, Dist. Parbhani.
3. Mohammed Iqbal S/o Mohammed Kasim
Age : 70 years, Occu.: Pensioner,
R/o: Soniya Gandhi Urdu School, Rahmat Nagar,
Parbhani, Dist. Parbhani.
4. Shakeel Khan S/o Ahmed Khan,
Age : 42 years, Occu.: Labour,
R/o: Mangalwara, Near Shahi Masjid, Parbhani. **...Petitioners**

Versus

1. The State of Maharashtra,
Through P.I. Police Station,
Police Station Nanalpeth, Dist. Parbhani.
(Copy to be served on Public Prosecutor
High Court Bench at Aurangabad.)
2. Mustaque Ahmed S/o Mohammed Ali Shah,
Age : 52 years, Occu.: Service,
R/o: Yusuf Colony, Parbhani Tq. & Dist. Parbhani. **...Respondents**

...

Advocate for Petitioners : Mr. Shaikh Wajeed Ahmed

APP for Respondent No.1/State : Mr. Y. G. Gujarati

Advocate for Respondent No.2 : Mr. Mahesh P Kale

...

CORAM : KISHORE C. SANT, J.

DATE : 27th APRIL 2023.

Per Court :

Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

1. The petitioners are shown as accused in a complaint filed by respondent no.2 in the Court of learned Chief Judicial Magistrate, Parbhani for the offences punishable under Sections 419, 420, 468, 471, 500, 501 read with Section 34 of the Indian Penal Code.

2. The facts in short are that respondent no.2 is a trust namely 'Kamel Education Society' Parbhani. The accused no.1/petitioner no.1 was removed from the office of the Trust. The allegation against petitioner nos. 2 to 4 is that they have created false record and filed Change Report bearing Inquiry No.34/2019 in the Court of Assistant Charity Commissioner, Parbhani. The verification of complainant came

to be recorded on 01.01.2020 by the learned Judicial Magistrate First Class (Court No.4), Parbhani. Vide order dated 05.01.2021, process came to be issued against the petitioners for the offence punishable under Section 420 read with Section 34 of IPC by the learned Magistrate, Parbhani.

3. The petitioners therefore filed Criminal Revision Petition No.43/2021 in the Court of learned Sessions Judge, at Parbhani. The learned Sessions Judge vide order dated 05.05.2022 dismissed the said Revision Petition by observing that after removing Secretary and Treasurer, the accused filed application for change report in the office of Assistant Charity Commissioner. It is observed that the consent letter under the false signatures were prepared and those were filed in the Inquiry Application before the Assistant Charity Commissioner. The Court thereafter considered that the order passed by the learned J.M.F.C. is rightly passed and the jurisdiction is rightly exercised.

4. The case of the petitioners is that respondent no.2 had made a false statement in the complaint in paragraph no.1 that petitioner no.1,

was working as Joint Secretary in the Committee of the Trust. He was removed by the Resolution No.5 dated 25.04.2010, whereas in the office of the Assistant Charity Commissioner, complainant himself filed Change Report, wherein accused no.1 is shown as office bearer. He thus submits that a false statement is made in the complaint and prays for quashing and setting aside the proceeding of the complaint.

. The learned Advocate for the petitioners has relied upon the judgment in Criminal Writ Petition No.222/2022 in the case of **Devendra @ Bablu Chotulal Chaudhari Vs. Trupti Devendra @ Bablu Chotulal Chaudhari**, passed by this Court, wherein this Court had considered the judgment in the case of **S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) By LRs. And others**, (1994) 1 Supreme Court Cases 1. It was a case under Section 125 of the Code of Criminal Procedure, wherein it was observed that the orders were obtained by playing fraud on the Court.

5. He further relied upon the judgment in the case of **State of Maharashtra Vs. Santosh Parvati Gaikwad**, in Criminal Application No.687/2019 passed by this Court at Principal Seat at Bombay, wherein

the Division Bench of this Court has observed that the order obtained by fraud or by non-disclosure of material facts, amounts to fraud on the Court and therefore is liable to be set aside.

. Lastly he relied upon the judgment in Criminal Appeal No.1232/2004 with Criminal Appeal No.1241/2004 in the case of **Mahalaxmi Gas & Essence Mart Vs. Nitin Mangaldas Ved and Another.** In this case also observation was made that the orders were obtained by playing fraud on the Court and appeals were dismissed.

6. As against that, learned Advocate for respondent no.2 vehemently opposed the petition. He submits that the allegation is that the petitioner no.1 was removed by Resolution dated 25.04.2010 and there is no false statement made in the complaint. He submits that as a matter of fact, Resolution was passed on 25.04.2010. Though it is contended that the learned Assistant Charity Commissioner vide order dated 08.05.2015 has rejected the Change Report, however therefore it cannot be said that the statement in the complaint is false.

. Learned APP also supports the impugned order.

7. This Court has considered the above judgments relied upon by the petitioners and the material alongwith petition memo. The entire argument is based upon the statement that the resolution was passed on 25.04.2010, wherein the accused no.1 was removed from the trust. The learned Advocate for the petitioner could not point out that in any case, the statement affects the merits of the matter or the Court has passed the order solely relying upon the statement. The Advocate for the respondent has also submitted that this case is as such where the order is passed solely relying upon the statement. This Court finds that the statement does not affect the merits of the matter and in such view cannot be said to be a false statement. It is not a case that respondent no.2 himself has ever made any statement contrary to his averment in the complaint. This Court therefore finds that there is no merit in the writ petition and thus the same stands dismissed.

8. Needless to say that the trial Court would not be influenced by these observations.

[KISHORE C. SANT, J.]

Najeeb.