

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT PARTY
NO. 74 OF 2022

Pralhad Dhondu Teli,
Age : 66 years, Occ. : Retired,
R/o. : Bodavad, Tq. Bodvad, Dist. Jalgaon ... **Applicant**

(Ori. Complainant)

VERSUS

1. The State of Maharashtra
Through The Jamner Police Station,
Tq. Jamner, Dist. Jalgaon

2. Anil Abhiman Patil,
Age : 42 years, Occ. : Head Master,
R/o. : Kapuswadi, Tq. Jamner,
Dist. Jalgaon

... **Respondents**

(Resp. No.2 - Ori. Accused)

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Mr. K.R. Doke – Advocate for Applicant
Mr. P.M. Kulkarni – APP for Respondent No.1, State
Mr. B.R. Waramaa – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 13th September, 2023

ORDER :

1. The applicant i.e. original complainant in Regular Criminal Case No. 36 of 2016 (old Regular Criminal Case No. 139 of 2010) is seeking leave to file appeal in respect of acquittal of present respondent No.2 i.e. original accused in the aforesaid case under the

judgment and order dated 17th May, 2022, from the charges punishable under Sections 408, 420, 468 and 471 of Indian Penal Code.

2. Learned Counsel for applicant – complainant submits that, in the year 1994 the respondent No.2 was appointed as Head-Master of the school by name Nutan Madhyamik Vidyalaya, Kapuswadi run by Vidya Prasarak Mandal, Kapuswadi. The applicant is President of the aforesaid institution. However, the respondent No.2 – accused gained confidence of applicant – complainant. All the record and proceeding of the institution was kept with him, but the respondent No.2 by taking disadvantage of the said trust misused the documents and also committed forgery and fabrication and thereby cheated the institution by committing misappropriation in respect of funds of the institution for his own benefit. He also tampered with the audit report to screen his misappropriation. Consequently, a private complaint was filed by the applicant against respondent No.2 in the Court of Judicial Magistrate First Class at Jamer (hereinafter referred to as “*learned Trial Court*”) being Regular Criminal Case No. 139 of 2010. However, the learned Trial Court dismissed the said complaint but the learned Sessions Judge, Jalgaon in Criminal

Revision Application No.126 of 2013 set aside that order. The order dated 8th February, 2016, passed by the learned Sessions Judge, Jalgaon was carried in Writ Petition No. 448 of 2016 to this Court and this Court vide order dated 23rd March, 2017 upheld the decision of learned Sessions Judge, Jalgaon and directed that, the concerned learned Trial Court to take appropriate steps in the aforesaid complaint. Accordingly, the learned Trial Court tried the said Regular Criminal Case No. 139 of 2010 and acquitted the respondent No.2 from all the charges punishable under Indian Penal Code as mentioned above.

3. Learned Counsel for applicant thus submitted that, the learned Trial Court i.e. learned J.M.F.C., Jamner ignored the documentary evidence produced by the applicant – complainant and wrongly observed that, the applicant could not establish the guilt of accused for want of supporting reliable evidence.

4. On the contrary, learned Counsel for respondent No.2 – accused supported the judgment of concerned learned Trial Court and pointed out that, the respondent No.2 – accused had already retired in the year 2012 and thereafter the applicant – complainant was incharge of entire institution, but despite he could not produce

original documents to establish guilt of accused.

5. Heard rival submissions and also perused the documents on record. Admittedly, on perusal of the judgment, it appears that the applicant – complainant could not establish the fact that, all the documents of institution were given in the custody of accused. There is no resolution to that effect. Despite making such averments there is no documentary evidence to show all the record of institution was given in the custody of respondent No.2. Moreover, no documents were produced on record by the applicant – complainant in respect of allegations against respondent No.2 – accused as regards the alleged misappropriation. Moreover, the applicant could not produce audit report also, in which according to him, the respondent No.2 – accused had made manipulations. Learned Counsel for applicant produced on record list of documents showing as to how the respondent No.2 – accused manipulated the record of institution. However, all these documents are xerox copies and not admissible in the evidence.

6. Moreover, learned Counsel for applicant – complainant also argued that, since the original documents were in custody of accused and the same could not be produced. However, it is

extremely important to note that, the respondent No.2 – accused had in fact retired in the year 2012 and proceeding of aforesaid complaint started in the year 2016. That means the complainant was having all the record of institution in his possession, but still he could not produce the supporting documents to establish guilt of respondent No.2 – accused. Therefore, considering all these aspects it appears that the learned Trial Court has properly considered all the aspects and acquitted the respondent No.2. No apparent perversity can be seen in the judgment of learned Trial Court i.e. Judicial Magistrate First Class at Jamner. Thus, in view of same, the application for leave to file appeal against aforesaid judgment stands dismissed.

[SANDIPKUMAR C. MORE]
JUDGE