

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

CRIMINAL APPLICATION NO.2848 OF 2019

KISHANRAO S/O. AMBADAS SOLAT
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. B. R. Kedar, Advocate for the Applicant.

Ms. V.N. Patil-Jadhav, APP, for the Respondent – State.

Mr. S.V. Adwant, Advocate for the Respondent No. 2.

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

DATE : JANUARY 27, 2023

PER COURT :

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

2. This is an application under Section 482 of the Cr.P.C. to quash the FIR bearing C.R. No. 257/2019 registered with Chandanzira Police Station, Jalna and R.C.C. No. 816 of 2021 pending on the file of learned JMFC, Jalna for the offences punishable under Sections 420 and 465 of the Indian Penal Code.

3. The applicant herein was the President of Ahilyadevi Holkar Bahuuddeshiya Sevabhavi Shikshan Sanstha, Mundwa (for short 'Sanstha'), a public trust registered with the office of the Assistant Charity Commissioner on 29.12.2008. The object of the Trust was

to impart Education. Dr. Badrinarayan Barwale, a businessman from Jalna, expressed his willingness to donate money to the Trust for the purpose of construction of English Medium School on a condition that the said school will be named as "Padmavibhushan Dr. Badrinarayan Barwale Vidyalaya". It is stated that the school has been constructed on the land donated by the applicant herein.

4. Dr. Badrinarayan Barwale allegedly executed an affidavit in favour of the Trust expressing his happiness and gratitude for having constructed the school and for fulfilling his dream of having a good school in the village. Dr. Badrinarayan Barwale congratulated the applicant herein, the then trustee of the Trust, for ensuring good quality construction with all amenities at par with Golden Jubilee School. He further stated that he was handing over the said school premises to the Trust and that he would not claim any right over the school premises.

5. One Shri. Arun Agrawal lodged a report on 13.08.2019 stating that the said affidavit was forged by the applicant herein. It is stated that on the basis

of the said forged affidavit, the applicant is trying to take over the Trust property. On the basis of the said FIR, lodged by the said Arun Agrawal, the aforestated crime came to be registered & upon investigation charge-sheet has been filed.

6. Learned Counsel for the Applicant submits that the allegations in the FIR as well as the other material collected in the course of the investigation, even if accepted in their entirety, do not disclose any cognizable offence as against the applicant. He submits that upon the death of Dr. Badrinarayan Barwale, his son Rajendra Barwale and others got signatures of the founder members of the Trust and submitted a change report with the office of the learned Assistant Charity Commissioner and got added six names in the executive committee of the said Trust and increased the strength of the members from 7 to 13. It is stated that the said change report has been accepted by the learned Assistant Charity Commissioner on 20.01.2018. Learned Counsel for the Applicant further submits that the Rajendra and other relatives thereafter started interfering with the administration of the Trust.

7. The Applicant and others having learnt that the change report was approved by the learned Assistant Charity Commissioner, filed Revision Application before the Joint Charity Commissioner, Aurangabad and the same is pending hearing. The applicant herein also made a complaint to the Officer In-charge of Chandanzira Police Station against said Rajendra Barwale and others for obstructing smooth functioning of the Trust. Learned Counsel for the Applicant states that the applicant had himself forwarded copy of the affidavit to Rajendra Barwale. Learned Counsel for the Applicant submits that the present FIR is a counter blast to the Revision Application filed by one of the founder members of the Trust before the Joint Charity Commissioner and a complaint filed by them before the Chandanzira Police Station. Learned Counsel for the Applicant submits that continuation of the criminal proceedings would be sheer abuse of the process of Court.

8. *Per contra*, learned APP and learned Counsel appearing for Respondent No. 2 submit that the applicant herein was not the president but was only a

member of the Trust on the date of execution of the said affidavit. He submits that the Respondent No. 2 had not brought the affidavit to the notice of any person till the year 2019. Learned Counsel for the Respondent No. 2 submits that the said undated affidavit was not executed by Dr. Badrinaryan Barwale and that the same is forged and fabricated with an intention of claiming right over the trust property.

9. We have perused the records and considered the submissions advanced by the learned Counsel appearing for respective parties.

10. Section 482 of Cr.P.C confers powers on the High Court, *inter alia*, to prevent abuse of the process of the Court and to secure the ends of justice. It is well settled that the powers under Section 482 of Cr.P.C can be exercised to quash the FIR or the criminal proceedings when the un-controverted allegations made in the First Information Report and the evidence collected in support thereof does not disclose the commission of any cognizable offence. We are cognizant that the powers conferred under Section 482 of the Cr.P.C are to be exercised carefully and

cautiously on the basis of sound principles and should not stifle the legitimate prosecution but certainly can be used to prevent undue persecution and thus secure the ends of justice

11. In the light of these well settled principle, the only question for our consideration is whether the allegations in the FIR and the other material on record, accepted in their entirety, discloses commission of cognizable offence.

12. The applicant is alleged to have committed offences punishable under Sections 420 and 465 of IPC. Section 420 prescribed punishment for cheating, which is defined under Section 415 IPC & reads as under:

415. Cheating.— Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.— A dishonest concealment of facts is a deception within the meaning of this section.

Section 465 prescribes punishment for forgery, which is defined under Section 463 and reads as under:

463. Forgery.— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

13. In Deepak Gaba & Ors Vs. State of Uttar Pradesh & Anr reported in 2023 SCC OnLine SC 3 the Hon'ble Apex Court has held as under :

17. In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any

person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating. Explaining the contours, this Court in Mohd. Ibrahim v. State of Bihar¹, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly induced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.

14. The essential ingredients of forgery are (a) making of false documents or part thereof, (b) fraudulent or dishonest intent to cause damage or injury to the public or any person or (c) to support any claim or title or with intent to cause damage or

¹ (2009) 8 SCC 751

injury to any person or for the other reason as specified in the section or (d) to cause any person to part with property (e) to cause any person to enter into a contract (f) to commit fraud or that fraud may be committed in coming future. In Sheila Sebastian Vs. R. Jawaharaj and Another reported in (2018) 7 SCC 581 the Hon'ble Supreme Court while considering the scope and ambit of Section 463, 464, & 465 has held thus:

19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are

satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

15. In the instant case, it is not in dispute that Dr. Badrinarayan Barwale had donated money to the trust for the purpose of construction of A school. It is also not in dispute that the money has been utilized for construction of the school building on the land donated by the applicant. The affidavit in question which is allegedly executed by Dr. Badrinarayan Barwale only acknowledges that the school has been constructed and his dream of having a good school in the village has been fulfilled. He has thanked the applicant, the then president, for constructing a good school with all amenities. The affidavit indicates that Dr. Badrinarayan Barwale had handed over the school premises to the Trust with an assurance that he would not claim any right over the said premises.

16. The records do not indicate that said affidavit has been executed with an intent to cause damage or injury to any person. The applicant cannot be compelled to face criminal prosecution only on vague

apprehension that the said affidavit may be used by him in future to claim any right over the Trust property or cause injury to the Trust.

17. Having considered the first information report and the other records, in our considered view, the same do not disclose the essential ingredients of cheating or forgery. It appears that there is dispute between the two groups over the management of Trust and the said dispute is pending before the Charity Commissioner. The complaint/FIR is an off-shoot of the said dispute. Under the circumstances and in view of the discussion supra, in our considered view, this is a fit case to exercise powers under Section 482 of Cr.P.C. to prevent an abuse of the process of Court.

18. In the result, the application is allowed in terms of prayer clauses 'B' & 'D-1'. Consequently, the FIR bearing C.R. No. 257/2019 registered with Chandanzira Police Station, Jalna and R.C.C. No. 816 of 2021 pending on the file of learned JMFC, Jalna for the offences punishable under Sections 420 and 465 of the Indian Penal Code are quashed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)