

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

CRIMINAL WRIT PETITION NO. 1592 OF 2022

Shri Ambadas s/o Digambar Deshpande,
Age : 75 years, Occu. : Nil,
R/o. : 21, Kalpataru housing society,
Garkheda parisar, Aurangabad,
District Aurangabad – 431 001.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Police Inspector,
Paithan Police Station, Paithan,
Tq. Paithan, Dist. Aurangabad.
2. Shri Devidas s/o Rangnathrao Kulkarni,
Age : 81 years, Occu. : retired,
R/o. : Rangar Hatti Mohalla,
Paithan Nagar parishad road,
Paithan, Tq. Paithan,
District Aurangabad – 431 107.
3. Shri Satish s/o Biharilal Baldava,
Age : 60 years, Occu. : agriculture,
R/o. : Paithan Court road,
Near Shrinath Hospital of Dr. Chakurkar,
Paithan, Tq. Paithan,
District Aurangabad – 431 107.
4. Shri Balkishan s/o Ramkaran Baheti,
Age : 82 years, Occu. : agriculture,
R/o. : Jar galli, Near Nursinh Temple,
In front of Ram Mandir, Paithan,
Taluka Paithan,
District Aurangabad – 431 107.

.. Respondents

Mr. Amit A. Mukhedkar, Advocate for the Petitioner.

Mr. Y. G. Gujarathi, APP for Respondent No. 1.

Mr. Milind Madhu Joshi, Advocate for Respondent Nos. 2 to 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 13th April, 2023.

Date on which judgment pronounced : 06th June, 2023.

JUDGMENT :-

. Rule. Rule made returnable forthwith by consent of the parties.

2. The present petition is filed by the original complainant who had filed application seeking direction to the police to conduct an investigation under Section 156 (3) of the Code of Criminal Procedure. Same was allowed and after investigation charge-sheet also came to be filed. However on an application for discharge the same came to be allowed. In this petition the petitioner is challenging the judgment and order passed by the revisional Court confirming order passed by the learned J.M.F.C. discharging the respondents.

3. The facts in short are that the petitioner was a founder member of trust namely Dnyanprabodhini Trust registered in the year 1981. The said trust runs a secondary school namely Shri Balaji Vidyalaya. The petitioner – complainant served as Headmaster in the said school at Paithan. While in service disciplinary action was taken against the complainant and he came to be terminated by the management with effect from 23.08.1999. The petitioner had challenged the said order

by filing an appeal in the School Tribunal bearing Appeal No. 200/1999. The said appeal however came to be dismissed. The petitioner preferred writ petition before this Court and the same also came to be dismissed. Review filed against that also came to be dismissed. After dismissal of writ petition and review he had also filed a LPA in this Court. LPA came to be dismissed. Review application in LPA also came to be dismissed. The petitioner thereafter filed SLP before the Hon'ble Apex Court. That SLP also came to be dismissed. Thus, the order of termination of the petitioner is upheld by all the Courts.

4. The petitioner after dismissal of writ petition filed a complaint against the accused persons including present respondent Nos. 2 to 4 with the allegation that, when the appeal was pending before the School Tribunal the record in the School Tribunal was changed. A charge-sheet in the disciplinary proceeding was prepared and signed by the Secretary of the trust. It was a specific ground raised in the appeal that the charge-sheet could not have been issued under the signature of the Secretary and it is only President who has authority to issue a charge-sheet. It is alleged that, on raising of this ground the respondents changed the record in the School Tribunal by replacing copy of the charge-sheet under the signature of the President. It is for

this reason the petitioner lost in the appeal. The complaint therefore came to be lodged for the offences punishable under Sections 465, 468, 471, 474 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). The said complaint came to be filed in the Court of learned J.M.F.C., Paithan bearing R.C.C. No. 158/2003. The learned J.M.F.C. after following procedure was pleased to direct the police to conduct investigation. The police on enquiry filed a report in the Court of learned J.M.F.C. The learned J.M.F.C. by order dated 12.11.2003 was pleased to issue process against all the accused persons for the offences punishable under Sections 465, 468, 471, 474 r/w Section 34 of the I.P.C.

5. The respondents along with others approached this Court by filing Criminal Application No. 1596/2005 and challenged the order of issuance of process. This Court after hearing the parties and considering the material recorded that, the learned Magistrate had directed the investigation. In the investigation it transpired that, prima facie, offence is made out and therefore dismissed the criminal application by judgment and order dated 23.12.2016.

6. After proceeding started, the learned J.M.F.C. by its order dated 09.10.2018 discharged the accused Nos. 3, 5, 6, 7 and 8 of the offences. The learned Trial Court considered that, the alleged forgery

has taken place when the record was in the School Tribunal. Since the petition came to be dismissed he has filed the complaint out of grudge. It is observed that there is specific finding recorded by the School Tribunal that, in fact, it was the complainant himself who had submitted a forged charge-sheet. This fact shows that the School Tribunal did not find any falsity in the record. It is further observed that, the learned J.M.F.C. had no reason to deal with the aspect which is already dealt with by the School Tribunal. It is recorded that the evidence of PW-2 and PW-3 was formal in character and did not show any material against the accused in order to attribute any act alleged by the complainant. It is ultimately held that there is no material in the record against the accused persons and passed the order.

7. The petitioner challenged the order passed by the learned J.M.F.C. by filing Criminal Revision Application No. 310/2018. The learned Additional Sessions Judge, Aurangabad by impugned judgment and order dated 02.02.2022 rejected the revision application. It is held that, the only allegation against the respondents is that the respondent Nos. 1 to 4 therein has hatched conspiracy and prepared false/forged supplementary charge-sheet. There is no evidence adduced in support of the said allegations. The witnesses examined by the complainant did not state anything about the alleged forged charge-sheet. The

petitioner is thus now before this Court.

8. The main ground of the petitioner is that while taking action, a charge-sheet was issued. Though as per the rules such charge-sheet is required to be issued under the signature of the President, it was not signed by the President, but was signed by the Secretary. When that ground was taken in the appeal, the accused persons replaced the said charge-sheet and thus have committed an offence. He submits that while issuing the process, the learned J.M.F.C. had considered all these aspects and was satisfied that a case is made out. The order of issuance of process was also maintained by this Court finding no fault in the order of issuance of process. He submits that once this Court has observed that, prima facie a case is made out, there was no question of discharging the respondents by the learned Trial Court. He further submits that, even the learned Sessions Judge has not considered the case properly. When clearly a case was made out against all the accused persons, still the same was not considered. The evidence of witnesses produced by the complainant was considered lightly and therefore, there is miscarriage of justice.

9. The learned advocate for respondent Nos. 2 to 4 submits that, the petitioner had lost before the School Tribunal. The petitioner had even filed a Writ Petition No. 1677/2001. The petitioner had filed

review petition bearing Review Petition No. 7370/2003 and the same was also dismissed. Thereafter, he had filed LPA bearing LPA No. 4/2004 and the same was also dismissed by the judgment and order dated 20.12.2005. Even in the LPA he filed review application and that was also dismissed on 25.03.2008. He thereafter filed two SLPs (Civil) No. 21494-21495/2008 and those also came to be dismissed on 04.08.2008. He submits that the alleged supplementary charge-sheet was filed before the School Tribunal on 12.07.2000. The appeal came to be decided on 30.11.2000. The petitioner obtained certified copy of charge-sheet on 26.10.2002. The complaint came to be filed on 23.07.2003 i.e. after three years of filing of the alleged charge-sheet. Till the time he was prosecuting the litigation before the Court he did not take steps in the complaint. He started taking steps thereafter. This clearly speaks of intention of the petitioner. He submits that both the witnesses produced by the complainant also have not supported the case and have not given any sufficient evidence in support of the complaint. Learned advocate prays for dismissal of the writ petition.

10. The learned A.P.P. supports the order passed by the learned Sessions Court.

11. By looking to the undisputed facts and the record it is seen that,

the allegation of the complainant that a forged and fabricated charge-sheet was filed in the record in the School Tribunal is already considered by all the Courts in the proceedings arising out of the proceeding before the School Tribunal. Both the Courts below have rightly considered this aspect. The learned Sessions Court has also discussed it sufficiently that the said issue is already dealt with by the Presiding Officer, School Tribunal, Aurangabad while dismissing the petitioner's case and the said order was maintained till the Hon'ble Apex Court. Further, both the Courts below have concurrently held, by looking at the evidence of the witnesses examined by the complainant that their evidence is not sufficient to make out a case to proceed with the trial.

12. This Court finds that, when both the Courts below are concurrent so far as the finding of the facts is concerned, this Court need not go again into the said aspect. No exceptional case is made out by the petitioner to interfere with the impugned orders. It is clear that the petitioner has reason to prosecute the respondents to ventilate his grievance as he was terminated from the service by the trust. When the authority has already dealt with the allegation about replacing of material and the said has attained finality, no purpose would be served by prosecuting the respondents. At the stage of issuance of process the

Court has to see as to whether case is made out to issue process. The consideration while deciding application for discharge or framing of charge the Court has to see whether sufficient material is there on record or not to proceed with the trial. The submission of the petitioner that Court had formed an opinion at the time of issuing process does not hold water.

13. As already discussed, both the Courts below have rightly passed the order and there is no sufficient material on record. This Court also finds no perversity or illegality committed by the learned Sessions Court and hence, the petition deserves to be dismissed.

14. Rule stands discharged.

(KISHORE C. SANT, J.)

PS.B.