

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 1742 / 2022

Sanjay S/o Nilkanthrao Lakhe Patil,
Age : 55 years, Occu. : Business and Social Work,
R/o Lakhangaon, Tql. Kallamb, Dist. Osmanabad.
Presently Residing at Ramnagar, Jalna,
Tq. & District Jalna.

...Petitioner

Versus

1. The State of Maharashtra
(Copy to be served on Public Prosecutor, High Court
of Judicature of Bombay, Bench at Aurangabad.)
2. Dilip s/o Laxman Sanap,
Age: 50 years Occu. : Agri.,
R/o: Wadzari, Tal. Patoda, Dist. Beed.

...Respondents

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Advocate for Petitioner : Mr. Vishwamber D. Gunale
APP for Respondent No.1/State : Smt. D. S. Jape
Advocate for Respondent No.2 : Mr. Swapnil Joshi i/by Mr. Shreyash Deshpande

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 10th APRIL, 2023.
PRONOUNCED ON : 5th JUNE, 2023.

JUDGMENT :

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

3. This petition is filed for quashment of the order dated 31.03.2021 passed by the learned Judicial Magistrate First Class, Patoda in Criminal Miscellaneous Application No.95/2013, which is confirmed by the learned Sessions Judge, Beed. This petition is also against the order dated 25.11.2022 passed by the learned learned Sessions Judge, Beed in Criminal Revision Application No.56/2022, praying to accept the 'B' Summary Report bearing No.26/2012 dated 30.06.2013 filed by the Investigating Officer.

4. The facts in short are that a complaint came to be filed by respondent no.2 in the Court of learned J.M.F.C., Patoda on 18.04.2012. The petitioner and two other persons namely Narendra Nilkanthrao Lakhe Patil and Rajendra Manikrao Kale are shown as accused for the offences punishable under Sections 463, 468, 420, 406, 409 of the Indian Penal Code. The incident on the basis of which the complaint was filed is that the present petitioner and respondent no.2 established a trust in the year 1988. The trust was established for the purpose of running Schools and Colleges. On 11.09.2001, as per the allegation the accused persons prepared a false and bogus resolution and filed the same in the University and thereby showing that the management has decided to transfer the college of Social Sciences run by the said Trust to the Karmaveer Pratishthan, Jalna. It is alleged that by this Trust in which respondent no.2 and the petitioner were working as Trustees came to be cheated. It is submitted that the said college was granted in favour of the Trust i.e. Navchaitanya Education Society, Wadzari Tal. Patoda, Dist. Beed.

The said college, pursuant to the resolution, came to be transferred on the basis of said resolution. One of other trustee namely Kusendra Kedar had also filed Criminal Writ Petition No.7122/2009 seeking direction to the University to establish Committee and to hold an enquiry in the matter of transfer. The said Committee submitted a report that the college is rightly handed over in favour of the Trust at Jalna. The main allegation is that these petitioners are the trustees of the Trust - Navchaitanya Education Society, Wadzari as well. By doing such things they got the college transferred in favour of another trust run by themselves.

5. The learned J.M.F.C. Patoda on receiving the complaint recorded the verification of the complainant under Section 200. In the verification its, complainant stated that he cannot tell as to in what manner and how he is cheated. He could not tell anything except that the college was transferred. The learned Magistrate directed police to carry out investigation under Section 156(3) of the Code of Criminal Procedure.

6. The police on the basis of investigation submitted 'B' Summary Report stating that no offence is made out. In the 'B' Summary Report, police recorded a conclusion that one petition was pending in the High Court, allegations are vague and the complaint itself is false etc. The said report was objected by respondent no.2 stating that the 'B' Summary Report is filed without making proper investigation. The investigation was carried in biased

manner and prayed for re-investigation or for grant him permission to prosecute the case.

. The 'B' Summary Report was filed on 30.07.2013. The learned Magistrate on 30.07.2019 again recorded the statement of the complainant under Section 200 and after recording the statement, vide order dated 31.03.2021, rejected the 'B' Summary Report. The petitioner therefore filed a Criminal Revision Application No.56/2022 in the Court of learned Sessions Judge, Beed on various grounds. The said Revision Application also came to be dismissed. Thus the petitioner is before this Court.

7. The learned Sessions Judge, while dismissing the Revision observed that the petitioner by submitting false and fabricated documents, filed change report and thereby removed complainant from the body of the trust. It is further observed that there was a letter dated 08.07.2010 received from the Social Welfare Directorate, Maharashtra State, Pune, recommending to the Government, not to transfer the college in spite of that by way of GR dated 07.04.2006. The said college came to be transferred to Karmaveer Prathishthan, Jalna. It is mentioned in the last paragraph of the said letter that Narendra Patil and Rajendra Kale are not the trustees of Nav Chaitanya Institute, Wadzari and thus the resolution shown to have been supported by accused no.2 and 3 is forged. The said resolution is passed on the basis of false and fabricated documents and thus the Government and University were mislead and this is how the Social Work College came to be transferred to the

Karmaveer Pratishthan Jalna. In fact in the said letter, there is recommendation to cancel the said permission and to take proper action. The Court came to the conclusion that the accused have prepared forged, fabricated documents and submitted the same to the Government and confirmed the order passed by the learned Magistrate.

8. The learned Advocate for the petitioner submits that the petitioner was a member of the trust. Resolution came to be passed by the trust recommending to the Government to transfer the said college in favour of another trust on the Agenda. It was subject no.3 in a meeting dated 20.03.1998 that some persons were removed from the membership of the trust. Respondent no.2 was one of such persons and thus there is no question of respondent no.2 having any interest in the trust. He submits that the other two persons were shown as members who have seconded the resolution. Thus everything has taken place by following proper procedure, respondent no.2 cannot have any grievance about any of the resolution passed by the trust. The complaint is made after ten years and therefore 'B' Summary Report was rightly filed by the police. Initially he had filed the petition challenging the order passed in Criminal Revision Petition. Pending the said Revision Petition, 'B' Summary Report was filed and in view of that the petition had become infructuous and that was disposed off by order dated 28.11.2014. He submits that the order is passed after six years of filing of 'B' Summary Report. From looking at the statement dated 30.07.2019, complainant could not state as to in

what manner he is cheated. He could not tell anything except that the college came to be transferred to the trust at Jalna. He submits that in the trust any member can propose resolution and any member can second the resolution. In this case, the resolution was rightly passed. Even the Government approved the transfer by order dated 10.02.2012. A three men Committee was appointed by the University and that Committee has also filed a report in favour of the petitioner. The Committee had rightly come to the conclusion that the persons namely Narendra Patil and Rajendra Kale, though were not trustees, however they were life members of the trust. The resolution to transfer college came to be passed in the General Body Meeting. The signatures of these two persons as seconder to the resolution is not in the capacity of the trustee, but only in the capacity as members of the trust. He submits that even the State Government has accepted the resolution and has acted upon the same. The Officer of Mantralaya also has submitted a report in respect of the transfer of the institution concluding that no cheating appears to have been made.

9. The learned Advocate for the petitioner further submits that the complaint is filed after 11 years of the incident. The complainant himself has signed the resolution. He had also appeared before the Committee. The police had rightly investigated and rightly submitted a report. The Criminal Court does not have jurisdiction to adjudicate upon such material. The proper authorities to take decision in respect of the transfer are the Government and

the University. Now reopening the case in 2021 is not proper and no trial is necessary. When 'B' Summary Report is filed by the police and when there is no sufficient material on record going on with the trial would certainly be an abuse of process of law. He prays that the petition be allowed by quashing the impugned order.

10. The learned Advocate for the petitioner placed reliance on the judgment in the case of **Amit Kapoor Vs. Ramesh Chander and Anr.**, reported in 2012 (9) SCC 460. Wherein the Hon'ble Apex Court laid down the principles for exercising of jurisdiction under Section 482. There cannot be a dispute about the said guidelines.

. The next judgment he relied upon, is in the case of **D. Venkatasubramaniam and Ors. Vs. M.K. Mohan Krishnamachari and Ors.**, reported in (2009) 10 SCC 488. In the said case, the Hon'ble Apex Court has considered that this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. cannot interfere with the statutory power of investigation by police.

11. He further relied upon the judgment in the case of **M.C. Mehta Vs. Union of India (UOI) and Ors.**, reported in (2007) 1 SCC 110. Wherein it is held that the Magistrate cannot compel the police officer to form particular opinion. The police has to form the opinion on the basis of the investigation. It is further held that the Magistrate has very limited role over the investigation.

. He relied upon the last judgment/order passed by this Court in Writ Petition No.12365/2019 in the case of **Karmaveer Pratishthan, Jalna and Anr. Vs. State of Maharashtra and Ors.** Wherein the parties were directed to appear before the Government/Hon'ble Minister/ Competent Authority in respect of transfer of said college. The learned Advocate therefore submits that this is clearly a case of transfer of management of the college and there is no criminal aspect involved.

12. Learned Advocate for respondent no.2 vehemently opposed the petition. He submits that there is no dispute about the facts. He submits that from the facts it is seen that the ingredients are made out of cognizable offence. He submits that the Court has rightly followed the procedure of recording the verification and thereby directing police to make investigation. Police did not carry proper investigation and submitted the report. He submits that when a cognizable offence is made out, there is no question of lapse of time. The learned Sessions Court has not committed any error and has considered the material in proper perspective. He submits that the President has taken the decision under the Guise of passing of resolution, when it is not properly passed therefore ingredients of Section 415 are clearly attracted. He submits that petitioner is also a President of the trust to which School is transferred and thus has committed breach of public trust. He submits that the documents which are now placed on record were not placed on record before the learned J.M.F.C. Patoda or before the learned Sessions Judge, Beed. There is not a

single document to show that the President has right to take decision on behalf of the trust. He submits that assembly question was also raised in respect of transfer of college and report was called. He ultimately submits that the orders passed by both the Court, shows proper application of mind. He submits that there is no scope to call for interference while exercising the powers of jurisdiction under Section 482, which is sparingly to be used. He submits that even no case is made out under Article 227 of the Constitution of India.

13. The learned Advocate for respondent no.2 relied upon the judgment in the case of **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and Others**, reported in AIR 2015 (SC)(Supp) 127. Wherein the Hon'ble Apex Court has held that the cognizance is a process where the Court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. It is held that the Magistrate has power to order further investigation under Section 173(8) of Cr.P.C. That was a case where the offence was under the Prevention of Corruption Act. In that case, the Special Judge had accepted the report under Section 173(2) of the Cr.P.C. and that order came to be set aside. It is further held that once the prosecution is of the view that no case is made out so as to prosecute an accused, unless the court finds otherwise, there is no point in making a request for sanction for prosecution. If the prosecution is simply vexatious, sanction for prosecution is not to be granted. That is one of the main considerations to be borne in mind by the competent authority while considering whether the sanction is to be

granted or not. It was held that it is for the sanctioning authority to consider the matter for grant of sanction.

14. The learned APP submits that the police did not find any material calling for prosecution and therefore 'B' Summary Report was filed. While submitting 'B' Summary Report, police also has taken into consideration a decision taken by the University in respect of a transfer.

15. This Court finds that the basic allegation is about preparing of false and fabricated document i.e. resolution of the trust. The petitioner is trying to impress upon the Court that the trust has passed the resolution and subsequent action is taken on the basis of the said resolution by the authorities and therefore no offence is made out. On the contrary, complainant's case is that the resolution on the basis of which, this action is taken itself is bogus and fabricated and thus everything is done in furtherance of the said resolution amounts playing fraud on the authorities. The report of the University or the Government was only on the basis of the material before those authorities. The question as to whether the resolution is false, fabricated was not before those authorities and therefore the submission made by the petitioner need not be accepted. From looking at the report of the police authorities, the learned Sessions Court, Beed has held that the letter/resolution itself is forged and fabricated that was submitted to the Government and therefore it was

necessary to initiate criminal proceeding, this Court finds that this being finding of the Court based upon the material before it, the same need not be disturbed. Secondly the submission of respondent no.2 that the material which is now placed before the Court, was not placed before the learned Sessions Court needs consideration. For this reason, this Court finds that when the material was not placed before the learned Sessions Court, Beed, the Sessions Judge could not get opportunity to look into the said material. For this reason also, no fault can be found with the order passed by the learned Sessions Court.

16. Considering all these aspects, this Court finds that no case is made out to call for interference and the petition deserves to be dismissed. Hence the following order.

ORDER

(i) The petition is dismissed. Rule stands discharged.

[KISHORE C. SANT, J.]

17. The learned Advocate for the petitioner submits that in this petition, interim relief was granted by this Court and it is running till now. He prays for continuation of the same for a period of four weeks.

. The learned Advocate for respondent no.2 opposes the prayer.

18. However, considering that the interim relief is running since long, same is continued for four weeks from today.

[KISHORE C. SANT, J.]

NAJEEB...