

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

949 CRIMINAL WRIT PETITION NO.1849 OF 2019
WITH APPLN/4450/2022 IN WP/1849/2019

KAMAL D/O. MADHUKAR PATIL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. Gunale V. D., Mr. Rudrawar S. G.
APP for Respondent-State : Mr. S. P. Deshmukh.
Advocate for Complainant/Applicant in Cri.Appln./4450/22 :
Mr. D. B. Pawar – Absent.

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CORAM : S. G. MEHARE, J.
DATE : 21.02.2023

PER COURT :-

1. Heard the learned counsel for the petitioner, learned APP for the respondent-State. Learned counsel appearing for the complainant did not appear. Hence, the matter proceeded ahead.

2. The allegations levelled against the petitioner are that she was using two dates of birth. In her school leaving certificate, her date of birth is 01.09.1960. However, in a matriculation certificate, her date of birth was 01.04.1964. She appointed as “Assistant Teacher” in the year 1995. It has been alleged against her that she had in collusion with the

Head Master had forged her school record and corrected her date of birth as “01.04.1964”.

3. On the basis of the above allegations, the charge sheet has been filed against the applicant.

4. Learned counsel for the petitioner has vehemently argued that she is not responsible to the date of birth mentioned in her matriculation certificate. Her true date of birth is 01.09.1960. She never got the benefit of her date of birth and she has been retired from her service. The charges levelled against her are baseless and there is no material to frame the charge against her. Therefore, she is liable to be discharged.

5. Per contra, the learned APP for the respondent/State would argue that *prima facie* evidence has been collected that the petitioner was using two date of birth at different places. In PAN card, she was using her date of birth as 1964. There are allegations against the petitioner that in conspiracy with Head Master, the record has been forged. Till date, the petitioner never applied with the competent authority to correct the date of birth in her matriculation certificate. *Prima facie* evidence is available against her that in PAN card, she was claiming that her date of birth is 1964 and for the purpose of service, she

was claiming that she was born in 1960. Hence, there is no substance in the writ petition.

6. Learned Judicial Magistrate First Class as well as learned Additional Sessions Judge-4, Parbhani discarded the prayer of petitioner to discharge her. Section 228 of the Cr.P.C. provides for framing of the charge. While framing the charge, the Court has to consider the material on record and hear the respective parties, upon the charge. When the Judge considered that there is sufficient ground for procedure against the accused, he may frame the charge and shall try the offence in accordance with the procedure. Section 227 of the Cr.P.C. provides that if after hearing the submissions of the prosecution and considering the record of the case, the Judge considers that there is not sufficient ground for proceeding against the accused. He shall discharge the accused and record his reasons for that. The Court while framing the charge, need not to examine record as if it is a trial. The Court has to consider the *prima facie* material sufficient to frame the charge.

7. The allegations levelled against the petitioner are supported with the documents. Her school leaving certificate and matriculation certificate shows two different birth dates. Till date, the petitioner never applied with the competent

authority to get the date of birth corrected in her matriculation certificate. The applicant was the daughter of the member of the Trust, where she was appointed. The serious allegations of tampering with the public record have been alleged against the petitioner with other co-accused.

8. Perusal of both orders impugned before the Court appears that the Courts have considered the principles laid down in Section 227 of the Cr.P.C. There is no clear and cogent material placed on record by the petitioner to satisfy that she was not involved in the alleged offence. The allegations have been levelled that both the accused in conspiracy have forged the documents. *Prima facie* material is available against the petitioner to frame the charge. The orders impugned before the Court are free from irregularity and illegality. The Court does not find any substance in the writ petition.

9. Hence the writ petition stands dismissed.

10. Criminal Application No.4450 of 2022 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-