

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 444 OF 2022

Anjuman E Targibe Taleem Akkalkot
through its Chairman Md. Zuber A.
Ganihippargi and Ors. ... Applicants

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Manoj Harit i/b Manoj Harit & Co., Adv. for the Applicants.

Mr. Arfan Sait, APP for State/Respondent No. 1.

Mr. Anant Vadgaonkar, Adv. for Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 24, 2023

P.C. :

The challenge in this application, under Section 482 of Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**"), is to the order of issue of process dated 15/03/2021 passed by the Court of Judicial Magistrate First Class, Akkalkot in S.T.C. No. 227/2020. Vide order impugned herein, a process for the offence punishable under Section 13(1)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "**MEPS Act**") came to be issued against the applicants herein (accused in the case).

2. The facts, in brief giving rise to the present application are as follows :-

a. Respondent no. 2 was employed as an 'Assistant Teacher' in

applicant no. 7-School. Applicant no. 2 was the Chairman and applicant no. 3 was the Secretary. Applicant nos. 2 to 5 were in management of the affairs of “Anjuman E Targibe Taleem Akkalkot”, an educational institute, applicant no. 1 herein. Applicant no. 6 was the Head Master of School, wherein respondent no. 2 was the employee. It is the case of respondent no. 2 that when she could not pay applicant nos. 2 to 5 money in response to their illegal demand, she came to be terminated of her employment. She had therefore approached the School Tribunal. The Tribunal allowed her application with a direction to re-instate her as an Assistant Teacher. Since the applicants intentionally avoided to comply with the order of School Tribunal, she lodged the complaint to the Court of Judicial Magistrate First Class, Akkalkot. Learned Judge was pleased to issue process as per order impugned herein.

3. Heard.

4. Learned Advocate for the applicants would submit that all the applicants were residing at Solapur i.e. beyond limits of territorial jurisdiction of the Court of Learned Magistrate, which has issued process against the applicants. Learned Magistrate did not comply with the mandatory provisions of Section 202 of Cr.P.C. The order impugned herein does itself indicate that the learned Magistrate thought it to be not necessary to hold any such inquiry. Nothing more is therefore required to upset the order of issue of process. According to learned Advocate, had the learned Magistrate made an inquiry under Section 202 of Cr.P.C., he would

not have issued process. Respondent no. 2 had initiated execution proceeding. She was infact re-instated, but she did not resume her duty. The Block Education Officer filed an affidavit to that effect in the execution proceeding. Shri. Ashok Bhanje, the Block Education Officer, Panchayat Samity Akkalkot is not an accused in the case.

a. Learned Advocate relied on the following judgments, in support of his contention that non-compliance of provisions of Section 202 of Cr.P.C. warrants interference with the order impugned herein :-

- **Vijay Dhanuka and Others vs. Najima Mamtaj and Others (2014)14 SCC 638;**
- **Udai Shankar Awasthi vs. State of Uttar Pradesh and Another (2013)2 SCC 435;**
- **Abhijit Pawar vs. Hemant Madhukar Nimbalkar and Another (2017)3 SCC 528;**
- **Deepak Gaba and Others vs. State of Uttar Pradesh and Another Criminal Appeal No. 2328 of 2022 decided by the Hon'ble Supreme Court of Indian on 02/01/2023;**
- **Satish @ Rajendra S/o. Harbans Tiwari and Others vs. State of Maharashtra and Another Criminal Writ Petition No. 431 of 2009 decided by Bombay High Court, Nagpur Bench on 07/06/2010 and**
- **Ratan N. Tata and Others vs. State of Maharashtra and**

Another 2019 SCC OnLine Bom 1324.

b. Learned Advocate would further submit that the judgment of Hon'ble Apex Court in the case of **Sunil Todi & Ors. vs. State of Gujarat & Anr.** reported in **Criminal Appeal No. 1446 of 2021 dated 03/12/2021**, pertain to the offence punishable under Section 138 of Negotiable Instruments Act, 1881. The same has no application to the facts and circumstances of the case in hand. Learned Advocate ultimately urged for allowing the application.

5. Learned Advocate for respondent no. 2, would on the other hand submit that the order passed by learned Magistrate speaks for itself. It is a well reasoned order. It suggests compliance of Section 202 of Cr.P.C. Whatever case the applicants have come with as to respondent no. 2 to have been re-instated and it was she who did not resume her duty, would be a matter of their defence. The same could only be looked into during the trial of case. Learned Advocate relied on the judgment in the case of **Sunil Todi & Ors. vs. State of Gujarat & Anr. (supra)**, to ultimately urge for dismissal of the application.

6. Considered the submissions advanced. Perused the complaint and the documents relied on. Also perused the authorities relied on.

7. Section 13 of MEPS Act reads thus,

“13. Penalty to Management for failure to comply with Tribunal's directions.

(1) If the Management fails, without any reasonable excuse to comply with any direction issued by the

Tribunal [under section 11 or any order issued by the Director under clause (a) of sub-section (1) or sub-section (4) of section 4A within the period specified in such direction, or as the case may be, under sub-section (5) of section 4A or within such further period as may be allowed by the Tribunal or Director, as the case may be,] the Management shall, on conviction, be punished,-

(a) for the first offence, [with imprisonment for a term which may extend to fifteen days or with fine which may extend to fifty thousand rupees, or with both]:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than [ten thousand rupees,] and

(b) for the second and subsequent offences [with imprisonment for a term which may extend to fifteen days or with fine which may extend to seventy five thousand rupees, or with both]:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than [twenty thousand rupees].

(2)(a) Where the Management committing an offence under this section is a society, every person, who at the time the offence was committed, was in-charge of, and was responsible to, the society, for the conduct of the affairs of the society, as well as the society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any person liable to the punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

(b) Notwithstanding anything contained in clause (a), where the offence has been committed by a society and it

is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any president, chairman, secretary, member, Head or manager or other Officer or servant of the society, such president, chairman, secretary, member Head or Manager or other Officer or servant concerned shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

8. For better appreciation, Section 202 of Cr.P.C. is reproduced below :-

“202. Postponement of issue of process. - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding :

Provided that no such direction for investigation shall be made, -

(a)

(b)

(2)

(3)

9. The Hon’ble Apex Court in the case of **Vijay Dhanuka and Others vs. Najima Mamtaj and Others** (*supra*), has held the provisions of Section 202 of Cr.P.C. *inter-alia* contemplates postponement of the issue of the process “in a case where the

accused is residing at a place beyond the area in which he exercises his jurisdiction”, is mandatory. Moreover in para 14 of its judgment in the case of **Vijay Dhanuka and Others vs. Najima Mamtaj and Others** (*supra*), it has thus been observed that :-

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows :-

“2. (g) ‘**inquiry**’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;”

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

10. On the same lines are the observations of the Hon’ble Apex Court in the cases of **Abhijit Pawar vs. Hemant Madhukar Nimbalkar and Another & Deepak Gaba and Others vs. State of Uttar Pradesh and Another** (*supra*) and the judgments of this Court, relied on by learned Advocate for the applicants.

11. It is true that the judgment in the case of **Sunil Todi & Ors. vs. State of Gujarat & Anr.** (*supra*) pertains to proceeding under

Section 138 of Negotiable Instruments Act, 1881. A question that falls for consideration in this application is as to ‘whether learned Magistrate has complied with the mandate of Section 202 of Cr.P.C.?’. It would therefore be necessary to reproduce the order impugned herein :-

“ORDER BELOW EXH-1 IN S.T.C. No. 227/2020

Perused the complaint and documents. Heard learned Advocate for the complainant. According to the complainant the accused is the president of the public trust namely Anjuman E Tarkib E Talim at Akkalkot. The accused nos. 2 to 5 are in the management of the trust. The accused no. 6 was the headmaster when the appeal of the complainant was allowed. The accused no. 6 have not allowed the complainant to join the service according to the direction of the learned School Tribunal Solapur. The accused no. 7 was the next headmaster from 04.01.2019. He even not allowed the complainant to join the services. The accused no. 8 is the present headmaster of the school, who also not allowed to join the complainant in the service. The accused nos. 1 to 8 are avoiding to follow the direction of the learned School Tribunal.

2. The complainant is the assistant teacher in the school of the accused since 28.10.2020. The accused nos. 1 to 5 and the headmaster terminated her from the service. The learned School Tribunal allowed her appeal no. 60/2018 and directed to re-instate. The complainant from 08.08.2019 tried to join the service as per the directions of the tribunal. She wrote a letter to accused no. 6 for the said purpose. The accused no. 6 denied to re-instate her until there is order of accused nos. 1 to 5. Accordingly on 09.08.2019, she as per the order of the Educational Officer went to the school accompanying with Block Education Officer. The accused no. 6 not allowed her to join the services. Despite of repeated correspondence on the part of the complainant, the

accused not followed the direction of the learned Tribunal, so they have committed an offence punishable under Section 13(1) of the Maharashtra Employees of Private School Act, 1977 (hereinafter to be referred to as "the Act"). On 14.10.2019, the Deputy Education Officer and the Development Officer were in the school of accused no. 8 for the purpose to re-instate the complainant. On that occasion also the accused no. 8 avoided on the ground of the unavailability of the daily presence muster. With these submissions the complainant prayed for issuing process against the accused.

3. At the outset, the learned Advocate for the complainant submitted that even though the accused nos. 1 to 7 are residing at a place beyond the area of the jurisdiction of the Court, the Court have the powers to make the inquiry in respect of the commission of the offence on the basis of the verification statement and other relevant documents on record. So according to his submission there is no reason for postponement of issue of process. So far as the submission is concerned, the inquiry under Section 202 of the Code of Criminal Procedure is to be done where the accused resides beyond the jurisdiction of the Court. The object of the inquiry is to save the litigants from false and vexatious complaints who are residing far away. There is possibility of harassment by filing the complaint against such persons who resides far away. **The nature of inquiry contemplated under Section 202 is wide. While making the inquiry the Magistrate is bound to inquire the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit.** The purpose of inquiry is to ascertain whether there are sufficient grounds for proceeding. **The case in hand relates to the allegation of disobedience of the order of the learned School Tribunal. The documentary evidence forms the material part of the inquiry. Moreover, the statement of the complainant also forms the part of the inquiry. So, I am of the view that the case in hand not requires independent inquiry to come to the conclusion whether**

there are sufficient grounds for proceeding.

4. The material document which is the bone of allegations against the accused management, is the order of learned School Tribunal, Solapur. The copy of order shows that the otherwise termination of the complainant was set aside and it was directed to the management of accused no. 1 to re-instate the complainant at her earlier post with certain other conditions. It is the allegation of the complainant that the accused nos. 6 to 8 being the headmasters of the school under the management of accused nos. 1 to 5 not allowed her to join the service. The allegations are supported by the **report of the Deputy Education Officer and Block Education Officer, Akkalkot. The correspondence by these officers shows the dereliction on the part of the headmasters to re-instate the complainant to her post.**

5. The complainant by filing her affidavit at Exhibit-4 specifically named the accused nos. 1 to 5 to be in the management of the public trust Anjuman E Tarkib. Her affidavit find support from the copy of the change report at serial no. 1 with list Exhibit-3. In view of Section 13 of the Act, the management is responsible to follow the directions issued by the Tribunal under Section 11 of the Act for the reinstatement of the employee. The record shows that the complainant have wrote to the accused management of the conduct of the headmasters. In these circumstances it is the management who has the obligation to follow the directions of the Tribunal. The complainant on oath stated that the accused management is also responsible for the dereliction and prayed for appropriate action. There are specific allegations that the management is not allowed her to join the service. These facts are witnessed by the Education Officers. Certainly there are material reasons for proceeding against the accused.

6. On conspectus of above discussion I am of the view that the complainant have made out the case for issuing process against the accused who are responsible and in-charge of the affairs of the public trust Anjuman E

Tarkib E Talim. In the result, it would be an appropriate to issue process against the accused. Accordingly, issue process against the accused punishable under Section 13(1)(a) of the Maharashtra Employees of Private School Act, 1977 vide Section 204 of the Code of Criminal Procedure.

Date : 15/03/2021

Sd/-

Judicial Magistrate First Class, Akkalkot”

12. Close reading of the aforesaid order would indicate that learned Magistrate was conscious of the fact that he was required to make an inquiry under Section 202 of Cr.P.C. He recorded verification of the complainant. Thereafter, he perused the affidavit filed by the complainant in support of the complaint. Learned Magistrate went through the order passed by School Tribunal. He also perused a report submitted by Deputy Education Officer and Block Education Officer, Akkalkot besides the correspondence made by these authorities. What the learned Magistrate has observed in the impugned order is that, no independent or separate inquiry is required to be made either by the Police Officer or by such other person, as he thinks fit. The order impugned undoubtedly indicate that the learned Magistrate took upon himself the exercise of making an inquiry under Section 202 of Cr.P.C. In the case of **Vijay Dhanuka and Others vs. Najima Mamtaj and Others** (*supra*), it has been specifically observed that no specific mode or manner of inquiry is provided under Section 202 of Cr.P.C. Sub-section (2) of 202 of Cr.P.C. specifically states that in an inquiry under Sub-section (1), learned Magistrate may, if he thinks fit, take evidence of witnesses on oath.

13. On going through the order impugned herein, this Court is of a view that the learned Magistrate did himself make inquiry, as is envisaged under Section 202 of Cr.P.C. and then passed a well reasoned order. The averments in the complaint *prima-facie* make out an offence against the applicants herein. Their role in the non-compliance of School Tribunal's order has been specifically averred in the complaint itself. It is reiterated that the learned Magistrate recorded the verification of the complaint. He perused the complainant's affidavit and all other documents placed on record in support of the complaint. The case of applicants that the Block Education Officer filed an affidavit in execution proceeding stating that respondent no. 2 was re-instated in service, but she did not resume her duty, is a factual matrix that could only be looked into during trial of the case.

14. For the reasons stated hereinabove, this Court finds no merit in the application. Hence, the application stands rejected and disposed of accordingly.

15. At the request of learned Advocate for the applicants, ad-interim relief to continue for next three weeks.

(R. G. AVACHAT, J.)