



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

914 CRIMINAL WRIT PETITION NO. 284 OF 2023

1. Bhilaji Shivram Soanwane ... **Petitioner**
Age 68 years, Occu: Retired,
R/o Dhamnar, Tq Sakri, Dist. Dhule

VERSUS

1. The State of Maharashtra
2. Vasant Sonu Khornar (Dead)
3. Hiranman Narayan Patil
Age 67 years, Occu: Retired
4. Daga Bhika Sonawane,
Aged 68 years, Occu: Retired
5. Avinash Ramdas Khairnar ... **Respondents**
Age 34 years, Occu: Service
All R/o R/o Dhamnar,
Tq Sakri, Dist. Dhule

...

Mr. D. S. Bagul, Advocate for Petitioner
Mr. V. M. Jaware, APP for Respondent No.1-State
Mr. Mohit S. Shah, Advocate for Respondent No.3
Mr. S. V. Dixit, Advocate for Respondent No.4
Mr. P. P. Mandlik, Advocate for Respondent No.5

CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.12.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. By the present Petition, the Petitioner takes exception to the order dated 08.10.2021 passed by the Additional Sessions Judge, Dhule in Criminal Application No.68 of 2018 thereby affirming the order dated 17.04.2018 passed by the learned Judicial Magistrate First Class, Sakri in Criminal Misc. Application No.54 of 2018, whereby issuance of summons was denied against the present Respondent No.5 (accused) and the complaint was dismissed against him.

3. The learned counsel appearing for the Petitioner submits that the Petitioner/Complainant filed a Criminal Misc. Application No.54 of 2018 before the Judicial Magistrate First Class, Sakri alleging that he is the Trustee of Yuva Sanghaytna, Dhamnar, registered under the provisions of Bombay Public Trust Act. Said Education Trust runs a High School. The Accused Nos.1 & 2 are self declared as President and Vice President of the said Trust. The Accused No. 3 is a trustee of said trust. Since, 1982 no election has been conducted. The Accused No.4 is working in the High School run by the Education Trust. The Accused No. 1 is real uncle of the Accused No. 4. The Accused Nos. 1 to 3 appointed

the Accused no. 4 by forging documents of the Trust and sanction for the Accused No.4 has been obtained on the basis of forged and fabricated documents. Therefore, the Accused persons have cheated the State Government. So also, prior to appointment of the Accused No. 4 no public notice was published. Therefore, the Petitioner prayed for investigation under Section 156(3) of the Criminal Procedure Code.

4. On 28.11.2015, the learned Magistrate passed an order and directed inquiry under Section 156(3) of Cr.P.C., which resulted into C-summary report submitted by the Investigating Officer on 30.01.2017. Therefore, the complainant filed a protest Petition for acceptance of C-Summary report. Thereafter, the Petitioner/ Complainant adduced the evidence under Section 200 of Criminal Procedure Code. On 12.02.2018, the learned Magistrate refused to accept the C-Summary report.

5. Accordingly, the Complainant/ Petitioner examined himself under Section 200 of Criminal Procedure Code and also examined another witness, namely, Babulal Devram Wagh. After considering the material available on record, on 17.04.2018, the learned Judicial Magistrate First Class passed an order and issued process as against the

Accused Nos. 1 to 3 only i.e., present Respondent Nos. 2, 3 and 4, however, refused to issue summons against the present Respondent No.5, who is original Accused No.4- Teacher.

6. Being aggrieved by the said order, the present Petitioner/ Original complainant filed Criminal Revision Application No.68 of 2018 before the learned Sessions Court. On 08.10.2021, the learned Revisional Court passed the impugned order and upheld the order dated 17.04.2018 passed by the learned Judicial Magistrate First Class.

7. The learned counsel appearing for the Petitioner/ complainant canvassed in vehemence that the Respondent Nos. 2 to 4 have manipulated the entire school report and the Accused No.4 secured job on the basis of manipulated record. However, both the Courts failed to consider that no advertisement was published for filling up the post of teachers and no resolution was passed by the Educational Trust. So also, enough material is available on record to prosecute the present Respondent No.5/Ori. Accused No.4, however, both the Courts below failed to consider the same, hence, prayed for quashing and setting aside the order.

8. Per contra, the learned counsel appearing for Respondent

No.5 submits that in pursuance of advertisement published by Vidhayak Yuva Sanghatana Educational Trust, Respondent No.5 submitted his candidature and after selection process was over, he got selected and joined on the post of Assistant Teacher. Therefore, the Respondent No.5 has not committed any offence as alleged by the Petitioner/Complainant, hence, prayed for dismissal of the Petition.

9. Needless to say that the present Petitioner is the original complainant in Criminal Misc. Application No.505 of 2015. The Petitioner has stated that he is a Trustee of a Yuga Sanghatna, Dhamnar, the Public Trust registered under the provisions of Bombay Public Trust Act. The said Public Trust runs a High School at Dhamnar. The Petitioner further alleged that the Accused Nos.1 and 2 declared themselves as President and Vice President of the said Trust. The accused No.3 is the Trustee. No election of Trust has been conducted since 1982. The Accused No.4 who is appointed by the Accused Nos.1 and 2, is the nephew of Accused No.1. The appointment of the Accused No. 4 i.e., Respondent No.5 is on the basis of forged documents and sanction was obtained fraudulently. Therefore, all the accused persons cheated the Government and the Educational Trust.

10. On face of record, it appears that the present Petitioner/Complainant initially prayed for investigation under Section 156(3) of Criminal Procedure Code for the alleged crime/offence. However, on the basis of the report submitted by the Investigating Officer, C-Summary report has been accepted on 30.01.2017. Thereafter, the present Petitioner/Complainant protested the C-Summary report. The Petitioner adduced evidence under Section 200 of Criminal Procedure Code. The Complainant himself examined another witness Shri Babulal Devram Wagh.

11. The Petitioner stated that the Accused Nos. 1 to 3, without publishing the advertisement to fill up the post of teachers, appointed the Accused No.4 to the post of teacher in the school run by the Education Trust. The Petitioner stated on oath that on 15.08.2008, the Accused Nos. 1 to 3 have shown about holding the meeting of Executive Council of the Trust. Shri Babulal Devram Wagh has been shown as a proposer, though he was not present in the meeting. Further, the signature of said Babulal Devram Wagh has been forged. Therefore, the accused persons have committed offence under Sections 463, 405, 420, 468, 471, 464 read with Section 34 of the Indian Penal Code.

12. On 17.04.2018, the learned Judicial Magistrate, Sakri passed an order and issued summons as against the Respondent Nos. 2 to 4 /Original Accused Nos.1 to 3, however, the complaint has been dismissed as against the present Respondent No.5/ Accused No.4.

13. On 08.10.2021, the learned Revisional Court passed the impugned order holding that certified copy of proceedings in inquiry Application No.57 of 2011 was pending before the learned Assistant Charity Commissioner. The name Shri Babulal Devram Wagh appearing is a Member of the Educational Trust. However, Certified copies of inquiry proceedings does not reveal that the Accused No.4/Respondent No.5 is having any overt act in his appointment.

14. In order to constitute offences punishable under Sections 465, 420, 468, 471, 464 read with Section 34 of Indian Penal Code, it is necessary to bring essential ingredients about preparing fraudulent, forged and fabricated documents. So also, the Respondent No.5 has secured the job on the basis of said fabricated documents. On perusal of the complaint I have not come across and found anywhere in the complaint where the complainant has made any such averment that the present Respondent No.5/ Accused has made any alteration, addition or

forged the documents which have been produced by him while securing appointment to the post of Assistant Teacher in the said Education Society. Therefore, I do not find that the impugned order passed by the Revisional Court affirming the order of the learned Judicial Magistrate is perverse, illegal, bad in law. Therefore, present Criminal Writ Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]

HRJadhav