



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1658 OF 2021

Syed Yousuf s/o Syed Musa,
Age 56 years, Occ. Service,
Resident of Gadipura, Nanded.

... Applicant

VERSUS

- 1) The State of Maharashtra.
- 2) Syed Wasim Bari s/o Sayed Shamsuddin,
Age 52 years, Occ. Nil.,
R/o. Labour Colony, Near Guest House,
Nanded.

... Respondents

...

Advocate for Applicant : Mr. Sohail Subhedar h/f Mr. N.S. Ghanekar
A.P.P. for Respondent no. 1 : Mr. K.N. Lokhande
Advocate for Respondent No 2 : Mr. Parag Barde

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 27.02.2024
PRONOUNCED ON : 05.03.2024**

PER COURT :

At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, the applicant is seeking quashment of Crime No. 162/2021, registered with Ardhapur police station, District Nanded, for the offences punishable under Sections 409, 420, 468, 471 of the Indian Penal Code.

3. The sum and substance of the allegations in the F.I.R. lodged by the respondent no. 2 is to the effect that he is the president of Ardhapur

Education Society. The applicant is the headmaster of the school being run by it. He has been working as such since almost 20 years prior to the F.I.R. He has four children. By virtue of the Promotion of the Two Child Norms Act, 2005 (hereinafter 'the Act') it was incumbent for him to have disclosed birth of two children after coming into force of the Act, in the year 2006 and 2009. He dishonestly and fraudulently concealed the fact and contrary to the provisions of law has derived monetary benefits, increments etc. Hence the offence was registered as mentioned herein above and initially coupled with the sections of the Indian Penal Code even Section 5 of the Act was also included.

4. The investigation was concluded in due course and the final report has been submitted under Section 173 of the Code of Criminal Procedure.

5. Having heard both the sides, it is conspicuous that admittedly, by resorting to the Act, the applicant was implicated under Section 5 of the Act together with the sections of the Indian Penal Code. Admittedly, it was an error inasmuch as no such Act was ever promulgated or had come into force. It was only in the form of a bill, which had never culminated in any statute. Consequently, realizing the fact, while filing the charge-sheet, the section of that Act was dropped and it was filed only under the aforementioned sections of the Indian Penal Code.

6. In view of such peculiar state of affairs, we had put a specific and precise query and had extended sufficient opportunity to the prosecution to substantiate its allegations about the petitioner having committed any crime of cheating, criminal breach of trust or preparation of false documents and using it, in view of the specific sections invoked.

7. In spite of availing sufficient opportunity, neither the learned prosecutor nor even the learned advocate for the respondent no. 2 could point out as to which monetary benefits the applicant has derived to which he was otherwise not entitled to, had he disclosed the fact of birth of two

children after the year 2006. The whole emphasize and basis for the investigating machinery to resort to these allegations constituting the offences under the Indian Penal Code was a provision from the bill which in fact had not at all transformed into a statute. If this be so, the fact of birth of two more children after the year 2006 could possibly invite some disciplinary action that too if it was demonstrable that he was under obligation under service law to disclose these facts. However, it cannot be said that by not disclosing the fact of birth of two more children he had *prima facie* dishonestly and fraudulently derived some service benefits that too by resorting to forgery.

8. Though it may not be wholly relevant, it would be appropriate to refer to one more circumstance. In fact, the respondent no. 2 had made an attempt to set the criminal law in motion by filing an application bearing O.M.C.A. No. 80/2012 in the Court of jurisdictional magistrate seeking a direction for registration of crime and investigating it on the same set of facts, by resorting to Section 156(3) of the Code of Criminal Procedure. However, precisely for the reasons, which we have resorted to herein above, the learned Magistrate rejected the application by a detailed order dated 20.04.2015. In spite of such state of affairs, some how the respondent no. 2 seem to have succeeded in setting the criminal law in motion in the form of registration of crime pursuant to the impugned F.I.R.

9. Be that as it may, in the absence of the ingredients for constituting the aforementioned crime for which the applicant has been charge-sheeted, it would be sheer abuse of process of law to allow the prosecution to go on, applying the principles laid down in the matter of **State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604.**

10. The Application is allowed. Crime No. 162/2021, registered with Ardhapur police station, District Nanded, for the offences punishable under Sections 409, 420, 468, 471 of the Indian Penal Code and the criminal case

bearing Regular Criminal Case No. 128/2021, pending before the Judicial Magistrate, First Class, Ardhapur, are quashed and set aside.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-