



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2420 OF 2021

Gangadhar s/o Shankarappa Mathpati (Swami)
Age 60 years, Occ. .Priest & Agricultural,
R/o. Gagalegaon, Tq. Biloli, Dist. Nanded.

... Applicant

VERSUS

- 1) The State of Maharashtra.
- 2) Vijaykumar s/o. Gopalrao Kulkarni,
Age 47 years, Occ. Service as Talathi,
at village Gagalegaon, Tq. Biloli,
Dist. Nanded.

... Respondents

...

Advocate for Applicant : Mr. G.K. Muneshwar
A.P.P. for Respondent/State : Mr. M.M. Nerlikar

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

RESERVED ON : 01.03.2024
PRONOUNCED ON : 05.03.2024

PER COURT :

Heard. 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. 38/2021, registered with Ramtirth police station, District Nanded, for the offences punishable under Sections 406, 420, 468, 471 read with Section 34 of the Indian Penal Code and the consequent criminal case bearing Regular Criminal Case No. 128/2022, pending before the Judicial Magistrate, First Class, Naigaon, Dist. Nanded.

3. The sum and substance of the allegations in the F.I.R. lodged by the respondent no. 2 are to the effect that he was serving as a Talathi of village Gagalegaon, Tq. Biloli since the year 2018. One Rajeshwar Vyankatrao Patil, President of Marotiraya Hanuman Mandir Trust, Gagalegaon, had filed a police complaint against him (respondent no. 2) and the applicant on 13.09.2020 alleging that both of them that is the applicant and the respondent no. 2 having conspired and manipulated the record of the priest of the temple namely Marotiraya Archak Balsing by modifying it as Bhunjyyappa Basayappa and the land Gat No. 55 of the Trust, admeasuring 6-Are, was mutated in the name of Bhunjyyappa Basayappa and misappropriated the government grant and thereby defrauded the government and the Trust.

4. The F.I.R. mentions that the respondent no. 2 was called by police in connection with enquiry into the allegations in respect of the complaint of Rajeshwar Vyankatrao Patil. In response to that he submitted that on 13.05.2020 the applicant obtained a false certificate from him (respondent no. 2) to the effect that Marotiraya Archak Balsing was Bhunjyyappa Basayappa and derived the benefit of the government grant in respect of the land of the Trust. The respondent no. 2 alleged that while he was in hurry in connection with official work, the applicant fraudulently obtained his signature on the certificate, which he presented to the bank and withdrew an amount of Rs. 13,400/-. The offence was registered. Investigation was carried out and in due course of time the charge-sheet was filed.

5. The learned advocate for the applicant would take us through the papers and the charge-sheet. He would submit that the post of priest is a hereditary office. The original priest was his grandfather. After demise of his grandfather in the year 1974 his father Shankarappa started looking after the temple till his death i.e. up to 26.08.1988 and thereafter he has been managing and maintaining the temple. It is in that capacity, that he had received the amount of Rs. 13,400/-. He has not committed any crime.

He has been falsely implicated by Rajeshwar Vyankatrao Patil. He would submit that after following due process, as a hereditary priest, on his application the mutation was applied for. However, the Collector rejected that application on the ground of limitation. He has preferred an appeal which is pending before the Divisional Commissioner, Aurangabad. He would, therefore, submit that it is a genuine dispute and after realizing that the issue is being raised by Rajeshwar Patil, he has deposited the money back. The respondent no. 2 was pressurized to lodge the F.I.R. There is no question of any dishonest or fraudulent intention. If at all, it would be a civil dispute as regards the management of the temple trust. It would be sheer abuse of the process of the Court to allow the prosecution to go on when his appeal has been pending before the Divisional Commissioner.

6. The learned advocate for the applicant would further submit that in fact the applicant had filed Misc. Criminal Application No. 44/2019 in respect of the self-same allegations seeking a direction for registration of Crime and its investigation under the provisions of Section 156(3) of the Code of Criminal Procedure against Rajeshwar Patil and the respondent no. 2 for receiving the grant in question. Though his application was rejected by the Magistrate, he has challenged the order in revision under Section 397 of the Code of Criminal Procedure, which is still pending. He would, therefore, submit that in view of such dispute regarding the management of the Trust, at the most it can be said that the applicant has been claiming to be the priest but no criminality can be attached to his claim.

7. The respondent no. 2 in spite of service and having caused appearance once before the Court, did not turn up.

8. The learned A.P.P would oppose the application. He would submit that the investigation has been carried out in a fair manner. In fact, the respondent no. 2 has also been made a co-accused for indulging in preparation of false document to enable the applicant to lay claim. As of

now, there is no order in favour of the applicant declaring him to be the hereditary priest still he laid a claim by using a false certificate issued by the respondent no. 2. It is a serious matter. Even if the applicant has subsequently deposited back the grant received that would not obliterate the crime. Opportunity deserves to be extended to the prosecution to substantiate the charge.

9. We have considered the rival submissions and perused the papers.

10. As can be seen from the papers, indeed there seems to be some dispute as regards the applicant's claim of being a hereditary priest. However, the fact remains that his grandfather and after demise of his grandfather his father were working as priests. In fact, the applicant possesses her ship certificate issued under the Bombay Regulation, 1827 issued by the Court of Jt. Civil Judge Junior Division, Naigaon in Misc. Civil Application (RJE) No. 74/2020. It has been expressly mentioned therein that deceased Shankarappa s/o Bhujaiyaappa Mathpati was his father and survived by the applicant and his mother and sisters. It is a certificate issued under the Bombay Regulation, it is an order *in rem*.

11. True it is that his application claiming to be the hereditary priest was rejected by the Deputy Collector (Atiyat) and the appeal preferred by him has also been dismissed. But he has challenged that order before the Divisional Commissioner. Assuming for the sake of arguments that he is not a hereditary priest, still when it is abundantly clear that he is claiming to be so and seeking a declaration by resorting to the remedies available to him in law, at the most it can be said that he is laying a false claim.

12. However, in order to attract criminality, it would be necessary to demonstrate that the applicant has been laying a false claim with dishonest and fraudulent intention. A copy of the 7x12 revenue record clearly shows that though the land Gat No. 55 has been standing in the name of Shri. Marotiraya Archak Balsing in the ownership column, name of the applicant's

father Shankarappa has been appearing in the possession column since 1970-71.

13. Besides, as can be seen from the order passed by the Collector, Nanded, on the applicant's appeal, it has been dismissed solely on the ground that the application for Virasat under the provision of Section 12(2) of the Atiyat Enquiry Act, 1952, was made beyond the time limit prescribed, after 41 years, as the sole ground for dismissing the appeal. We are merely pointing out this fact to demonstrate that irrespective of the ultimate decision in that proceeding, it cannot be said by any stretch of imagination that the applicant has been laying a claim dishonestly and fraudulently by resorting to some forgery.

14. It is equally important to note that admittedly, the allegations were in respect of withdrawal of an amount of government grant to the tune of Rs. 13,400/- which he had subsequently returned. True it is that mere return of the money would not obliterate the crime of misappropriation as it could constitute a temporary misappropriation. However, in our considered view, the fact that the money was returned *ex facie* substantiates the fact that the applicant has been claiming the right of a hereditary priest not by way of some vexatious litigation but by seeking to take recourse to the rule of law.

15. In view of such peculiar facts and circumstances, in our considered view, the crime alleged has its genesis in a legitimate civil dispute about the right of the applicant to claim himself to be the heir of the original priest and seeking to succeed to the office as such, it would be inappropriate to allow the prosecution to go on in spite of aforementioned state of affairs.

16. In our considered view, it would be abuse of process of law and an exercise in futility to allow the prosecution to go on and the applicant to face the trial.

17. The Application is allowed. Crime No. 38/2021, registered with

Ramtirth police station, District Nanded, for the offences punishable under Sections 406, 420, 468, 471 read with Section 34 of the Indian Penal Code and the consequent criminal case bearing Regular Criminal Case No. 128/2022, pending before the Judicial Magistrate, First Class, Naigaon, Dist. Nanded, are quashed and set aside.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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