



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

Criminal Writ Petition No. 410 Of 2025

Dr. Abdul Gaffar Quadri s/o Abdul Razzak Quadri,
Age : 67 years, Occupation -Medical Practitioner,
R/o Seema Nursing Home,
Roshan Gate, Aurangabad.

.. Petitioner

Versus

1. State of Maharashtra
through Police Inspector,
City Chowk Police Station,
Aurangabad.
2. Ajaj Ahmed Khan Abdulla Khan,
Age : Major, Occ. Business,
R/o Plot No.66, New S.T. Colony,
Katkot Gate, Aurangabad.
3. Abdul Wajid Abdul Sattar,
Age : 43 years, Occ. Service,
R/o Maulana Azad High School,
Town Hall, Aurangabad.
4. Manjur Ahmed Qureshi,
Age : 63 years, Occ. Retired,
R/o Maulana Azad High School,
Town Hall, Aurangabad.

.. Respondents

- * **Mr. Shailendra S. Gangakhedkar,**
Advocate for the Petitioner.
- * **Mr. K.K. Naik,** APP for Respondent/State.
- * **Mr. C.V. Dharurkar,**
Advocate for the Respondent No.2.

CORAM : SHAILESH P. BRAHME, J.

Date On Which The
Arguments Were Heard : **8th APRIL 2025**

Date On Which The
Judgment Is Pronounced : **21st APRIL 2025**

J U D G M E N T :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both sides finally considering exigency in the matter.

2. Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure to challenge following orders passed by the Judicial Magistrate First Class, Aurangabad in R.C.C. No.654/2013 :

- (a) Order dated 12.02.2018 issuance of process against Petitioner.
- (b) Order dated 01.07.2022 below Exhibit-82 framing of charge.
- (c) Order dated 16.05.2024 below Exhibit-88, rejecting application for conducting investigation.

3. In a private complaint which was filed by the Respondent No.2 registered as R.C.C. No.654/2013, the allegations are that the Petitioner is the President of Education Institution which runs aided school.

Respondent No.2 is his nephew who was appointed as Peon on the basis of forged transfer school certificate and without following procedure of law. Though he was illiterate, he was shown to be 5th standard passed. On the basis of bogus documents, approval was secured from the Education Officer. Due to illegal appointment, Petitioner and Respondent Nos. 2 and 3 deceived the Government and public exchequer. It is stated that they have committed offence under Sections 409, 465, 467, 471 read with 34 of the Indian Penal Code.

4. Considering the complaint of the Respondent No.2, his verification recorded on 28.05.2013 and statement of one of the witnesses, process was issued only against Respondent Nos. 2 and 3 by the jurisdictional Magistrate on 13.12.2023. Being aggrieved, Revision was filed by the Respondent No.2/Complainant which was allowed vide judgment and order dated 01.01.2018. Judgment and order of the Revisional Court dated 01.01.2018 was challenged by the Petitioner vide Criminal Writ Petition No.269/2018. It was disposed of vide order dated 02.12.2019 without interfering impugned order of the Revisional Court with a direction to the Magistrate to proceed in accordance with law. However by that time already process was issued against the Petitioner vide order dated 12.02.2018.

5. A charge was framed by the learned Magistrate vide Exhibit-84 against the Petitioner and Respondent No.3

for offence under Sections 409, 465, 467, 471 read with 34 of the Indian Penal Code on 01.07.2022 which is under challenge in the present petition. Petitioner submitted application Exhibit-88, soliciting direction to conduct investigation as per the order dated 02.12.2019 passed in Writ Petition No.269/2018. It was rejected on 16.05.2024 which is also impugned in the present petition.

6. Learned Counsel Mr. S.S. Gangakhedkar appearing for the Petitioner submits that there is no prima facie case or material against the Petitioner and it would be abuse of process of law to proceed against him. He would submit that charge was framed against him without following the procedure contemplated by Chapter XV of the Code. The impugned orders below Exhibits-84 and 88 are against the directions issued by High Court in Writ Petition No.269/2018. It is further submitted that no investigation was conducted and no evidence or any fresh material was brought on record before framing charge. Hence impugned orders are unsustainable. There is violation of Sections 245 and 246. He would rely on judgment of Supreme Court in the matter of **Sunil Mehta and Another Vs. State of Gujarat and Another**, (2013) 9 SCC 209.

7. Per contra, contesting Respondent No.2/Complainant who is represented by Advocate Mr. Chaitanya Dharurkar,

repels the submissions by tendering on record certified copy of evidence of the Complainant recorded before charge on 25.03.2019 and Exhibit-86 dated 01.07.2022. He would advert attention to the Roznama dated 26.11.2024 to show that Petitioner and his lawyer were absent when they were called upon to cross-examine the Complainant which was evidence before charge. In the absence of cross-examination, the deposition of the Complainant was considered and the charge was framed. It is submitted that Criminal Writ Petition No.269/2018 was filed belatedly because by that time process was issued. It is further submitted that there is gross delay in challenging the issuance of process. It is submitted that due procedure of law was followed by Magistrate in passing impugned orders and the matter is at the stage of recording of statement under Section 313. It is further submitted that the Petitioner is protracting the matter. He did not raise any objection at the time of framing of charge. Remedy under Section 397 of the Code was passed. It is submitted that in view of lapses on the part of the Petitioner, he is not entitled to any discretionary relief.

8. Learned APP supports impugned order and adopts the submissions of Respondent No.2.

9. At the outset, it needs to be noted that R.C.C. No.654/2013 filed on 12.04.2013 has not been decided by

the trial Magistrate even after 12 years. The proceedings were stayed by interim orders on 02.12.2019 in Criminal Writ Petition No.269/2018, preferred at the instance of Petitioner, challenging judgment and order dated 01.01.2018 passed in Criminal Revision No.01/2014. Before filing of the petition in the High Court, process was issued against the Petitioner on 12.02.2018 which was not brought to the notice of High Court while passing order dated 12.06.2019 and final order on 02.12.2019. No reason is coming-forth as to why this important aspect of the matter was suppressed from High Court.

10. It is rightly contended by Advocate Mr. Dharurkar that Criminal Writ Petition No.269/2018 was belatedly filed and so is the case with present petition which is filed on 01.12.2024, challenging orders dated 12.02.2018 (issuance of process); order dated 01.07.2022 (framing of charge) and order dated 16.05.2024 (rejecting application Exhibit-88). After six years, the Petitioner challenged the orders of issuance of process.

11. When his plea was recorded under Section 246 on 01.07.2022, Petitioner did not express any protest. Against the order dated 01.07.2022 below Exhibit-24, remedy under Section 397 of the Code was available to the Petitioner which has not been availed and directly petition is filed. There are lapses on the part of the

Petitioner. This Court is of the considered view that Petitioner cannot be permitted to take disadvantage of his lapses. Petitioner has protracted the proceeding, suppressed the material facts and approached this Court belatedly.

12. It reveals from record that initially process was issued on 13.12.2013 against Respondent Nos. 3 and 4, considering the complaint, verification of the Complainant, statement of witness - Mr. Javed Moiuddin and report of investigation under Section 202. Thereafter additional Sessions Judge held that in judgment and order dated 01.01.2018 in Criminal Revision No.01/2014 that there was prima facie case against the Petitioner. This judgment and order was sought to be challenged in Criminal Writ Petition No.269/2018, but it was not upset by the High Court. On the contrary, it was observed in its order dated 02.12.2019 that Magistrate would proceed with in accordance with law. On this backdrop, order of issuance of process which is impugned was issued on 12.02.2018. Considering the material against the Petitioner referred above, I am of the considered view that there is strong prima facie case against him undisputedly Respondent No.3 who was appointed by the Petitioner, is his nephew and the allegations against them are serious and needs to be gone into by full-fledged trial.

13. Learned Counsel for the Petitioner vehemently canvassed that procedure contemplated by Chapter XV was not followed. After issuance of process, the evidence for prosecution was adduced under Section 244 of the Code. The Complainant adduced his evidence. His deposition was recorded on 25.03.2019. Roznama produced by the Petitioner alongwith paper-book shows that Petitioner failed to cross-examine the Respondent No.2/Complainant. Though he was present, matter was adjourned to 20.04.2019, 07.06.2019, 15.06.2019. Ultimately vide order dated 26.11.2024, it was recorded by learned Presiding Officer that accused and their Counsel failed to conduct cross-examination. Thereafter matter was closed for framing of charge. Evidence closure pursis was filed by the Complainant. Thus it is evident that matter was posted for evidence before charge and ample opportunity was given to the Petitioner and co-accused to conduct cross-examination. This would amount to sufficient compliance of Section 244.

14. Considering material on record and failure on the part of the Petitioner to conduct cross-examination, Magistrate found sufficient material to frame charge. Ultimately on 11.07.2022 charge was framed. I do not find any procedural illegality or irregularity in framing the charge. I do not find any substance in the submission of the Counsel for the Petitioner that no

further evidence was adduced or additional material was not placed before the Court and whatever material which was there at the stage of Section 202, the charge was framed.

15. Learned Counsel has relied on the judgment of Supreme Court in the matter of Sunil Mehta and Another (supra). In that case, Appellant before the Supreme Court were accused against whom process was issued by the Magistrate after conducting inquiry under Section 202 of the Code of Criminal Procedure. That was challenged before High Court unsuccessfully. When the parties were before the trial Court for adducing evidence under Section 244, Respondent-Complainant therein, chose not to lead any evidence and whatever was submitted alongwith complaint, was to be considered for framing of the charge. The charge was framed considering the material which was before the Court at the stage of issuance of process which is disapproved by the Supreme Court. I have gone through Paragraph Nos. 9, 10, 12 and 14 of the judgment of the Supreme Court. However, the matter before the Supreme Court is distinguishable on facts.

16. In the case in hand, endeavour was made by the Complainant to adduce evidence before the charge. The deposition of the Complainant was recorded and the Complainant was offered for cross-examination. Thus at

the time of framing of the charge, deposition of the Complainant recorded before framing of charge was considered and then the charge is framed. Therefore what is laid down by the Apex Court has already been followed in the present case. The Petitioner cannot get any benefit of the judgment.

17. Application Exhibit-88 was filed on 18.07.2022, soliciting direction to conduct investigation. Such a type of application was not maintainable. By order dated 16.05.2024, it was rightly rejected. I do not find any illegality or perversity. Magistrate is not expected to undertake any investigation after evidence has been adduced and the charge has been framed. Petitioner failed to examine Complainant and the evidence was closed. The Magistrate is bound to follow procedure as per Section 246 of the Code.

18. For the reasons recorded above, I find no merit in the petition. Criminal Writ Petition is dismissed. Rule is discharged. R.C.C. No.654/2013 is expedited.

SHAILESH P. BRAHME
JUDGE

NAJEEB...