



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1679 OF 2023

- 1) Waman S/o Namdev Ghodke,
Age-39 years, Occu:Service,
R/o-Shirsal, Tq-Ausa, Dist-Latur,
- 2) Balaji S/o Limbrajrao Yadav,
Age-49 years, Occu:Agri.,
R/o-Ausa, Tq-Ausa, Dist-Latur.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through P.I., Jilhapheth
Police Station, Jalgaon,
- 2) Kishor S/o Vilas Wankhede,
Age-50 years, Occu:Service,
R/o-Plot No.8, Shiv Colony,
Undirkheda Road, Jalgaon,
Tq. and Dist-Jalgaon.

...RESPONDENTS

...
Mr. Satish S. Manale Advocate for Applicants.
Mr. V.K. Kotecha, A.P.P. for Respondent No.1 – State.
Mr. B.S. Shinde Advocate for Respondent No.2.
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CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

DATE OF RESERVING ORDER : 14th JANUARY 2025

DATE OF PRONOUNCING ORDER : 24th JANUARY 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashment of the proceedings in R.C.C. No. 936 of 2022, pending on the file of learned Chief Judicial Magistrate, Jalgaon arising out of the First Information Report (for short "the FIR") vide Crime No. 13 of 2018 registered with Jilha Peth Police Station, Jalgaon for the offence punishable under Sections 420, 465, 466, 471, 209 read with Section 34 of the Indian Penal Code.
2. Heard learned Advocate Mr. Manale for applicants, learned APP Mr. Kotecha for respondent No.1 – State and learned Advocate Mr. Shinde for respondent No.2.
3. Learned Advocate for the applicants has taken us through the contents of the FIR and the entire charge-sheet. He submits that respondent No.2 has lodged the FIR in his official capacity. He is serving as Desk Officer, General Administration Department, Zilla Parishad, Jalgaon. The FIR states that the advertisement for Class-IV posts i.e. peon in Zilla Parishad, Jalgaon, was given in 2012. The entire process was completed in two steps i.e. firstly written examination and secondly viva voce.

The written examination was conducted at eleven centers and then interviews were held. Appointment letters were given to the selected candidates on 7th February 2013. There was a wait list also. Candidate at Serial No.1 from the wait list, Mahadu Shamrao Pawar (present accused No.1 as per charge-sheet) lodged the complaint stating that candidate at Sr. No.7 from select list - Balaji Limbrajrao Yadav (present applicant No.2 - original accused No.2) had produced false certificate of earthquake affected person. Inquiry was held and notice was issued to Balaji Yadav, as to why he should not be terminated. Instead of giving reply to the notice Balaji Yadav gave resignation. Thereafter the wait list candidate at Serial No.1 - Mahadu Pawar approached this Court and submitted that he should be appointed in place of Balaji Yadav. This Court gave directions accordingly and appointment letter was issued to Mahadu Pawar on 18th March 2016. After said Mahadu Pawar resumed duty, one Satish Tidke gave complaint application on 12th July 2016 stating that Mahadu Pawar had not given the written examination personally but in his place a dummy candidate had given the examination. Again inquiry was held and it was found that some other person gave written examination on the Hall Ticket Number of Mahadu Pawar. Therefore, the FIR

was lodged only against Mahadu Pawar. Name of present applicants was not appearing in the FIR. During the investigation it is then stated that these applicants have role to play and it is on the basis of statement of co-accused Mahadu Pawar. Entire material collected in the investigation does not show any role against the applicants and therefore, it would be futile exercise to ask the applicants to face the trial.

4. Learned APP as well as learned Advocate for respondent No.2 opposed the Application and they submit that the role has been attributed to applicant Nos.1 and 2. Certainly, there is statement of co-accused. But now the documents which have been seized in the matter are in the form of forged Hall Tickets and those have been sent for handwriting expert's opinion and therefore, it would be then premature to quash the entire proceedings.

5. It is to be noted that the case appears to have chequered history in respect of the appointment to the posts of peon is concerned. The advertisement was published on 9th April 2012 and the list was prepared of the selected candidates and also of the wait list candidates. The selected candidates were asked to resume their duties by giving appointment letters on 7th February

2013. But then Mahadu Pawar, the candidate at Serial No.1 in the wait list, made compliant that Balaji Yadav, the candidate at Serial No.7 in the select list, had given false document i.e. the certificate of earthquake affected person. When the notice was issued to Balaji Yadav, regarding why he should not be terminated, he resigned from the post and went away. It appears that Zilla Parishad had not taken that aspect to the logical end. No inquiry was made nor any FIR was lodged for submission of that alleged forged document. Resignation of Balaji Yadav was simply accepted and he was allowed to go. At that time, at no point of time nor even in his Petition before this Court, original accused No.1 Mahadu Pawar had made a statement that present applicants had taken money from him i.e. to the extent of Rs.3,00,000/-, took his documents, made photo copies of the same and then assured him that the job would be given to him. Now, after Mahadu Pawar was arrested and interrogated, then he is making such statements. Upon his statement, the present applicants have been made as an accused. Even now, as per the charge-sheet, it is not clear as to which document is forged document. Only on the basis of the statement of co-accused, which is *per se* inadmissible in the evidence, prosecution will not be able to take the matter further as against the present

applicants. It is not the case of the prosecution that one of the present applicant had appeared as dummy candidate for original accused No.1 Mahadu Pawar, though it appears that there is video recording and photographs available of the examination, on the basis of which conclusion has been drawn that original accused No.1 has not appeared in the examination.

6. Another point that is required to be considered is, at the time of hearing of the Writ Petition filed by accused No.1 Mahadu Pawar, the Zilla Parishad had not taken the stand that somebody else had appeared in the examination in place of said petitioner. Only when said Satish Tidke had raised objection, it appears that the inquiry has been made. Statement of said Satish Tidke taken under Section 161 of the Code of Criminal Procedure would show that when he was proceeding from Ausa to Latur, two persons sitting on the front seat were talking that Mahadu Pawar has secured job in Zilla Parishad, Jalgaon without giving examination. Then said Satish Tidke collected the documents under the Right to Information Act and also saw the video recording taken at the time of examination and then made the complaint. Now, it appears that it is the say of the prosecution that in fact said Satish Tidke has been got up by the present applicants. But there is no evidence to that effect. Under the said

circumstance, which documents have been forged is not clear and only on the basis of statement of co-accused, which is *per se* inadmissible in evidence as per law, it would be unjust to ask the applicants to face the trial and therefore, this is a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No. 936 of 2022, pending on the file of learned Chief Judicial Magistrate, Jalgaon arising out of the First Information Report vide Crime No. 13 of 2018 registered with Jilha Peth Police Station, Jalgaon, for the offence punishable under Sections 420, 465, 466, 471, 209 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant No.1 - Waman S/o Namdev Ghodke and applicant No.2 - Balaji S/o Limbrajrao Yadav.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE