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902-WP-755-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO. 755 OF 2025

Samiuddin Kamroddin Kazi

VERSUS

Ayyub Khan Sher Khan And Another

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Mr. Samiuddin K. Kazi, Party In Person.

Smt. M. N. Ghanekar, APP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 4th JULY 2025.

PC :-

1. Heard Smt. Ghanekar, learned APP for Respondent-State and Mr. Kazi. party in person.
2. The petitioner had filed a Criminal Misc. Application under Section 156(3) of the Cr.P.C. before the learned Judicial Magistrate First Class, Sailu, Dist. Parbhani, seeking registration of an offence against Respondent No.1 under Section 170 of the Indian Penal Code, 1860.
3. It is the case of the petitioner that the Respondent No.1 retired on 21st July 2021 and, even thereafter, he was working in the office of Municipal Council, Sailu Dist. Parbhani. On noticing this, the petitioner

approached the Police Inspector by filing an application praying for taking action against respondent No.1. Since no action was taken, he approached even the Superior Authority by filing an application. However, even the Superior Authority did not take any cognizance and thus, he was constrained to approach the learned JMFC, Sailu.

4. The learned JMFC, Sailu, by its order dated 8th September 2023 rejected the application observing that the complainant failed to show as to which illegal act is done by the respondent No.1. This observation was made after recording the verification and taking the statement of the petitioner. The petitioner, thereafter, approached the learned Sessions Judge by filing a revision. The learned Additional Sessions Judge, Parbhani, also dismissed the revision by its order dated 7th February 2025 observing that no illegality was pointed out in the order passed by the learned JMFC. Therefore, the petitioner is before this Court.

5. It is argued that though later on it was shown that the respondent No.1 was given extension under the orders of the authorities, that extension itself was fabricated. It is only after lodging complaint by this

petitioner, forged documents are prepared showing that the respondent had been appointed on contractual basis after his retirement. He submits that the complaint was filed on 21st September 2021. It is thereafter the letter is prepared on 2nd August 2021. He further submits that looking to the application filed by the respondent, it clearly shows that the respondent had retired from the service. Looking to the date which is prior to retirement, he submits that, no such wording could have been used in such letter. The wording used shows that he stood retired on that date. On that day, the respondent was very much in service and was yet to retire. He further argued that respondent is shown to have been appointed as per Government Resolution dated 8th January 2016. When this G.R. itself is cancelled by subsequent G.R. dated 17th December 2016, he thus submits that even so called appointment on contract basis itself is illegal. He relied upon the judgment of the Hon'ble Apex Court in the case of ***Biswanath Mukherjee Vs. The State***¹.

6. Learned APP submits that the petitioner could not show as to what illegal act is done by the respondent No.1. Both Courts have rightly

1 AIR 1967 CAL 602

discussed this aspect and have rightly dealt with the matter. No interference is required. She also points out that after noticing that the G.R. on the basis of which the contractual appointment was given is cancelled, the contractual appointment also came to be terminated with effect from 20th January 2023. She thus submits that, at the most, this may be a case of illegal appointment, however, that cannot be gone into while deciding the criminal complaint. It is sufficient to show that respondent was appointed on contractual basis by the authorities.

7. In the case of *Biswanath Mukherjee* (supra), it is held that an act under the colour of such office be taken as the act which could not have been done without assuming official authority or responsibility. There is no dispute about the said proposition. In the present case, however, what material is that there was an order, though subsequent, appointing the respondent on contractual basis. While considering the present case, this criminal court need not go into the validity of such contractual appointment.

8. On going through the orders and the record, it is seen that the petitioner is related to the respondents. The respondent is the uncle-in-

law of the petitioner. This Court certainly finds that there is an element of personal vengeance behind lodging the complaint. The relationship is accepted by the petitioner. In view of clause (viii) of the guidelines laid down in the case of ***State Of Haryana And Ors vs Ch. Bhajan Lal And Ors.***². This Court is of the opinion that the complaint has been lodged with an oblique motive, merely to harass the respondent. Certainly, this would be an abuse of process of law. The petition was filed before the JMFC, even the revision came to be dismissed and still the petitioner has come to this Court without any material. This Court does not find any illegality in the orders passed by the learned JMFC, Sailu and learned Additional Sessions Judge, Parbhani. This is a clear example showing how legal machinery is tried to be used with an oblique motive due to strained relations with the respondent. The petition is therefore dismissed, with costs of Rs.25,000/- to be paid to the Legal Aid Services Authority of this Court.

9. If the petitioner fails to deposit the said amount within two weeks from today, the same shall be recovered from his salary, as it is reported

2 AIR 1992 Sc 604

that he is in service.

10. With this, Writ petition stands disposed off.

[KISHORE C. SANT, J.]