



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 CRIMINAL APPLICATION NO.3245 OF 2022

Sarangdhar Murlidhar Lodhe,
Age 51 yrs., Occ. Service,
R/o Flat No.106, Happy Home,
Anand Vihar, Gat No.33,
Itkheda, Paithan Road, Aurangabad,
Tq. & Dist. Aurangabad.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Bidkin,
Tq. Paithan, Dist. Aurangabad.
- 2 Shaikh Ahmed s/o Shaikh Usman,
Age 49 yrs., Occ.
R/o Saadat Nagar, Bidkin,
Tq. Paithan, Dist. Aurangabad.
- 3 The Superintendent of Police,
Aurangabad (Rural).
- 4 Mahesh F. Ghuge,
Age 39 yrs., Occ. Service
as Police Sub Inspector,
Police Station, Bidkin,
Tq. Paithan, Dist. Aurangabad.

... Respondents

...

Mr. N.S. Ghanekar, Advocate for applicant
Mrs. R.P. Gour, APP for respondent Nos.1 and 3

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 11th JULY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, initially for quashment of First Information Report vide Crime No.371/2022 dated 12.08.2022 registered with Police Station, Bidkin, Tq. Paithan, Dist. Aurangabad, for the offence punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.149/2024 pending before learned Judicial Magistrate First Class, Paithan.

2 Heard learned Advocate Mr. N.S. Ghanekar for applicant and learned APP Mrs. R.P. Gour for respondent Nos.1 and 3.

3 Learned Advocate for applicant has taken us through entire charge sheet including First Information Report and submits that applicant was serving as Village Development Officer from 02.01.2013 to 21.01.2014 in said village Bidkin. Accused No.1 had filed documents including the report of Circle Officer, Bidkin, to Tahsildar, Paithan, possession receipt,

panchnama, Kabala Patrak in the office of Grampanchayat for taking necessary entries. The matter was taken as per the procedure before the meeting of Grampanchayat on 02.01.2014. Resolution to that effect was passed on the same day approving the act of taking entry on the basis of Kabala Patrak. Accordingly, he has taken the entry. He has not fabricated any false documents. There is no evidence to show the participation of the accused in the commission of offence. As a part of his duty as a Government servant he has taken the entry as per resolution that was passed. It is then stated that offences were punishable with maximum sentence of seven years, still he came to be arrested on 12.08.2022 and no notice was given under Section 41-A of the Code of Criminal Procedure, 1973. Therefore, the arrest of applicant is in violation of directions given by Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar** [2014 (8) SCC 273]. In fact, there was no necessity to arrest him, but in order to cause harm to his reputation as well as cause his loss taking into consideration his capacity as Government servant he was arrested. He was sent in Police Custody for three days, therefore, his detention has caused irreparable loss and great mental agony to applicant. Therefore, applicant is making two fold prayers i.e. quashment of the proceedings itself and respondents should be directed to give compensation of Rs.10,00,000/- to applicant.

4 Learned APP strongly opposed the application in respect of both prayers and submit that entire charge sheet is filed and it can be seen that original accused No.2 Shaikh Mohammad Shaikh Karim has cheated the Government by unauthorizedly encroaching upon the Government property by preparing false documents. He then filed application with present applicant and other Government offices to regularize those documents and his ownership/possession. It is stated that informant is a Social Worker residing in Bidkin. There is about 30 feet x 50 feet area next to Government well on the Eastern side i.e. nearly 1500 square feet has been unauthorizedly encroached upon by Shaikh Mohammad Shaikh Karim. When the informant made inquiry, then he came to know that for the first time Shaikh Mohammad's name came to be entered in 2014 to Namuna No.8 by Mutation Entry No.1673. While making application he had produced Kabala Patrak and possession receipt allegedly given by Sub Divisional Officer, Paithan, however, when he made inquiry with Sub Divisional Officer, it was told that no Kabala Patrak filed from 2000 to 2021 is traceable. Therefore, it appears that Shaikh Mohammad Shaikh Karim with the help of some Agents from the office of Sub Divisional Officer and some other persons prepared those documents. Now, the investigation is over and when inquiry was made with the Grampanchayat members, they have stated that their signatures are not appearing on the resolution. That means many documents appeared to have

been prepared falsely. Learned APP relies on the affidavit of PSI Mr. Mahesh Fulchand Ghuge from Police Station, Bidkin, wherein he has stated as to how the investigation has been carried out by him. Involvement of the present applicant was found and, therefore, he had arrested. He denies that arrest of applicant is illegal. Though the additional affidavit-in-reply has been given by applicant stating that he has not prepared the Mutation Entry on the basis of Kabala Patrak or other documents, but it was on the basis of resolution in the Grampanchayat meeting. The Chief Executive Officer has conducted Departmental Enquiry though his explanation has been accepted; yet, it is on the administrative side, not on the criminal side. The Investigating Officer will have to go by his own investigation and, therefore, no case is made out for granting compensation also, much less to quash the proceedings.

5 Here, it is to be noted that First Information Report has been lodged by a Social Worker. On the basis of some inquiry, he had made, according to him, original accused No.2 has encroached upon 1500 square feet area from Bidkin and then in 2014 he made application for getting his name mutated to the said land. It appears that in 2014 said Shaikh Mohammad Shaikh Karim had given an application as per the contention of present applicant as well as the Grampanchayat record and along with the same he had produced certain documents. The Investigating Officer has

collected the copies of documents which were allegedly produced by Shaikh Mohammad Shaikh Karim. Those documents are stated to be forged. Those documents include Kabala Patrak dated 20.05.2011, panchnama and possession receipt. The office of Sub Divisional Officer has denied to have issued such Kabala Patrak. Even it can be seen from another angle that the land was belonging to Government and, therefore, Sub Divisional Officer cannot be considered as the appropriate officer, who could have given grant of the Government land under the Maharashtra Land Revenue Code. Present applicant being the Gramsevak, in fact, ought to have verified the document before placing it before the Grampanchayat. That appears to have not been done. But he states that as per resolution in the meeting he has taken Mutation Entry. Of course, there are statements of Waman Ramrao Sathe and Harun Amar Jilani, who are members of Grampanchayat stating that no such subject appeared in the agenda of meeting dated 02.01.2014; yet, the fact is that taking the entry in the mutation register was the official duty of present applicant. Now, in the entire charge sheet there is no evidence to suggest that those documents were forged by present applicant. The documents appears to have not been sent for Handwriting Expert's opinion and the opinion of such expert has not been placed in the charge sheet. Therefore, when as against the present applicant, who is a Government servant, the prosecution intended to allege that he has taken certain entries

which are illegal or on the basis of some forged documents in his official capacity, then the prosecution ought to have obtained sanction to prosecute the applicant. In the entire charge sheet, which came to be filed on 01.02.2024, copy of such sanction order has not been placed. It is not the case of present respondents that concerned Magistrate has not taken the cognizance of offence yet. Immediately after the charge sheet was filed it appears to have been numbered and then as usual the cognizance has been taken. When the applicant is a Government servant, the sanction under Section 197 of the Code of Criminal Procedure is mandatory. It was tried to be submitted on behalf of respondents that preparation of false documents and cheating cannot be the part of official duty of a Government servant. In this respect, we would like to submit that First Information Report has been lodged by a third person in a sense he is a social worker. In order to prove an offence under Section 420 of the Indian Penal Code, preferably the First Information Report should be by that person, who has been cheated. Now, here, the prosecution as well as the informant intends to portray that there is cheating of the Government. In this respect we would say that if that resolution was passed in 2014 itself, then till filing of First Information Report on 12.08.2022 why the Government had not taken step through its appropriate officer to file a report stating that Government has been cheated. Any Grampanchayat member or official has also not come forward to file the

report. Therefore, it cannot be stated that the cheating was that of State Government and offence is made out against applicant.

6 As regards offence under Section 465, 467, 468, 471 read with Section 34 of the Indian Penal Code is concerned, it is now transpiring after the investigation that all those documents appeared to have been produced by Shaikh Mohammad before Grampanchayat for getting his name mutated, even otherwise also. At the cost of repetition, we would say that there is no evidence against applicant that he had prepared or assisted/aided original accused No.2 in preparation of these documents.

7 Coming to the prayer regarding compensation, it is to be noted that when accused was produced before the Magistrate, no objection appears to have been raised regarding illegality in the arrest. The remand order dated 13.08.2022 shows that present applicant was represented by a competent Advocate and his statements have been recorded. The competent Advocate had not raised any point in respect of illegality in the arrest, especially not adhering to the guidelines in **Arnesh Kumar** (supra). When the applicant came to be arrested, at that time the offence that was registered was under Section 420, 465, 468, 471 of the Indian Penal Code and the role of present applicant was yet to be cleared. Therefore, now, in application under Section 482 of the Code of Criminal Procedure he cannot be allowed to

raise the point of illegal arrest and compensation. It appears that Departmental Enquiry was initiated against applicant and by order dated 10.03.2023 the Block Development Officer has accepted the explanation given by applicant. The document has been produced on record, however, we find that it is one line statement in the communication by Block Development Officer to Deputy Chief Executive Officer, Zilla Parishad, Aurangabad. The ultimate order that was passed has not been produced along with additional affidavit-in-reply. Learned Magistrate appears to have considered all the legal requirements and then remanded the present applicant to Police Custody, which he has undergone. Therefore, no case is made out for granting compensation, however, as aforesaid, the sanction to prosecute the applicant has not been obtained and still the cognizance has been taken by learned Magistrate. The application deserves to be allowed by exercising powers under Section 482 of the Code of Criminal Procedure. Hence following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) The proceedings in Regular Criminal Case No.149/2024 pending before learned Judicial Magistrate First Class, Paithan, Tq. Paithan, Dist.

Aurangabad, arising out of First Information Report vide Crime No.371/2022 dated 12.08.2022 registered with Police Station, Bidkin, Tq. Paithan, Dist. Aurangabad, for the offence punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Sarangdhar Murlidhar Lodhe**.

iii) Prayer clause (F) seeking directions to respondents to give compensation of Rs.10,00,000/- to applicant stands rejected.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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