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Cri. Application-3967-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3967 OF 2024

Shaikh Shakiloddin Jamiloddin
Age: 57 Years, Occu: Principal
R/o. 2997A, Flat No.7, Malik Apartments,
Baliram Peth, Jalgaon,
Taluka and Dist. Jalgaon.

...APPLICANT

VERSUS

The State of Maharashtra
Represented through the Officers of
Dharangaon Police Station, Dharangaon
Taluka Dharangaon Dist. Jalgaon.

...RESPONDENT

...

Ms. Rashmi Sanket Kulkarni, Advocate for the Applicant.

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

CORAM : KISHORE C. SANT, J.
RESERVED ON : 21st AUGUST 2025.
PRONOUNCED ON : 24th SEPTEMBER 2025.

ORDER :-

1. Heard Ms. Kulkarni, the learned Advocate for the Applicant and Ms. Ghanekar, the learned APP for Respondent – State. This Criminal Application is heard for final disposal at the stage of admission by consent of the parties.

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2. This Criminal Application is filed by the original informant in Crime No. 370 of 2019, registered with Dharangaon Police Station dated 25th September 2019, for the offences punishable under Sections 143, 147, 149, 352, 448, 417, 465, 468, 471, 186, 323, 504 and 506 of the Indian Penal Code, 1860 (for short “IPC”) and Sections 37(1), 37(3) and 135 of the Maharashtra Police Act. Sessions trial started bearing Sessions Case No.242 of 2022 before learned Additional Sessions Judge, Jalgaon. A prayer in this petition is to quash and set aside the order dated 1st June 2024 passed by the learned Additional Sessions Judge, Jalgaon, on an application below Exh. 20. The respondent is the State in the said case. The accused is not a party to this petition.

3. By way of impugned order, the learned Sessions Judge has rejected the application of the original informant seeking direction under Section 173(8) Cr.PC..

4. The facts, in short, giving rise to the present application are that, the applicant lodged the FIR with Dharangaon Police Station. It is stated

that he happens to be Assistant Teacher since 1992 in a School namely, Anglo Urdu High School and Jr. College, Dharangaon. He is promoted to the post of Head Master on 21st January 2017. This School is run by Dharangaon Urdu Education Society. One Shafi Ahmed Bhai Miya Kazi came to be elected in 2019 as President and is presently working as a President.

5. In the said Society, the accused persons were working as Members of Managing Committee. The Headmaster is the ex-officio Secretary. In that capacity, the applicant is looking after as office Secretary. It is further stated that the accounts of the Society and the School are operated with the signatures of the Applicant and the Secretary. The payment is made through J.D.C.C. Bank, Branch at Dharangaon.

6. It is alleged that Sagir Ahmed Gulam Rasul Khatik, Mohd. Naeem Akhtar Abdul Hamid Kazi, Mehbood Kha Ahmed Kha Pathan, Abdul Majid Abdul Rasul Ajij and Shaikh Mohd. Farukh Mohd. Ibrahim, prepared a false stamp of the Society and prepared bogus resolution.

They filed change report in the office of learned Assistant Charity Commissioner, Jalgaon, and thereafter started interfering in the affairs of the Trust and the School. They also filed a Suit for cancellation of the process of recruitment of Teachers in the School. No stay was granted in their favour, and now, an appeal is pending in the Court of learned District Judge, Jalgaon. However, there is no order is passed in their favour there as well.

7. It is further alleged that on 25th September 2019, at around 08:45 p.m., the accused persons came to the School and forced the applicant to close down the School. They directed him to make arrangement for the meeting of the school. He informed them that when the school is going on, there cannot be any meeting and not to interfere in the working of the school hours. On that, the accused persons manhandled him. They also threatened the informant that he would be terminated. On this, the complaint was lodged.

8. The police filed a charge-sheet. A case was committed to the Sessions Court. In the meantime, the applicant approached this Court

seeking direction to the trial Court to pass an order under Section 173(8) of Cr.PC.. Since the application was not decided, the applicant approached this Court by filing a Writ Petition No. 484/2024. This Court disposed off the said writ petition directing the trial Court to decide the matter in the light of judgment in the case of ***Venubhai Haribhai Malaviya Vs. State of Gujarat and Anr.***¹ The applicant thereafter, approached the trial Court. The learned trial Judge, thereafter, passed an order on Exh.20 rejecting the application. It is thus, the applicant is before this Court.

9. Ms. Kulkarni, the learned Advocate for the applicant, vehemently argued the application. She submits that charge-sheet came to be filed on 11th November 2020 before the learned JMFC. The application was filed within two months thereafter on 1st January 2021 before the learned JMFC. The case was committed on 27th September 2022. The informant had approached this Court seeking directions for further investigation. This Court, however, directed the applicant to approach

1 2019 AIR (Supreme Court) 5233

the trial Court. On 21st July 2022, the learned trial Court framed the charges without deciding the application under Section 173(8) of Cr.P.C. She submits that the learned Sessions Judge ought to have considered that further investigation was necessary. In any case, it was necessary to decide the application prior to framing of charges. She relied upon the following judgments:

- (i) *Anant Thanur Karmuse Vs. The State of Maharashtra*²;
- (ii) *The State through Central Bureau of Investigation Vs. Hemendhra Reddy and Anr.*³;
- (iii) *Dinubhai Boghabhai Solanki Vs. The State of Gujarat and Ors.*⁴;
- (iv) *Vinubhai Haribhai Malaviya and Ors. Vs. The State of Gujarat and Ors.*⁵;
- (v) *Devendra Nath Singh Vs. State of Bihar and Ors.*⁶

10. Learned Advocate for the applicant ultimately submits that the application ought to have been allowed. The application for further

2 (2023) 5 SCC 802

3 2023 SCC OnLine SC 515

4 (2014) 4 SCC 626

5 AIR2019SC5233

6 MANU/SC/1306/2022

investigation can be allowed even after framing of the charges. The facts in the present case clearly justify the prayer in the application. She thus prays that the petition deserves to be allowed, and consequently, the application Exh. 20 in Sessions Case No. 242/2022 also deserves to be allowed.

11. Ms. Ghanekar, the learned APP, vehemently opposed the application. She submits that the charges are already framed. After framing of the charges, no such application needs to be allowed. The dispute is thus mainly (i) as to whether the fact in the present case to justify the prayers in the application, (ii) whether the Sessions Court was justified in rejecting the application and (iii) whether, at this stage, this Court can allow the application.

12. In support of her submissions, she relied upon the following judgments:-

(i) *K. Vadivel Vs. K. Shanthi and Ors.*⁷;

(ii) *Popular Muthiah Vs. State*⁸;

7 2024 SCC OnLine SC 2643

8 (2006) 7 SCC 296

(iii) ***Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Anr.***⁹

13. In the case of ***Anant Thanur Karmuse*** (supra), the Hon'ble Apex Court held that further investigation can be ordered even after filing of a charge-sheet. Framing of the charges cannot be an impediment in ordering further investigation/re-investigation/*de-novo* investigation, if the facts so warrant. The Hon'ble Apex Court, while considering the earlier decisions, held that the Constitutional Courts have the power to order further investigation/re-investigation/*de-novo* investigation even after the charge-sheet is filed and charges are framed. From the judgment in the case of ***Bharati Tamang Vs. Union of Indian and Ors.***¹⁰ is considered wherein the principles are laid down as below:

“41. From the various decisions relied upon by the petitioner counsel as well as by respondents' counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

41.2. Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

9 2019 AIR (Supreme Court) 5233

10 (2013) 15 SCC 578

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

14. In the case of ***Venubhai Haribhau Malviya Vs. The State of Gujarat and Ors.*** (supra), the Hon’ble Supreme Court reiterated that Constitutional Courts have the power to direct further investigation even after filing of the charge-sheet and even after framing of the charges.

15. In the case of ***C.B.I. Vs. Hemendhra Reddy*** (supra), the Hon'ble Apex Court summarized the conclusion in paragraph No.77 as below:

“77. We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the Cr.P.C. it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the Cr.P.C. to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.”

16. In the case of ***Dinubhai Boghabhai Solanki*** (supra), the Hon'ble Apex Court held that the accused is not a necessary party. No hearing is required to be given to the accused. Both the parties argued much on the basis of judgment in the case of ***Venubhai Haribhau Malviya*** (supra).

17. What is ultimately held in the said case is that in that case the Court came to a clear conclusion that two documents were allegedly prepared and were fake and bogus. The Court came to the conclusion in that case that further investigation was necessary. Further investigation was directed by setting aside the order passed by the High Court.

18. So far as judgment relied upon by the learned APP is concerned, she relied upon the judgment in the case of *K. Vadivel Vs. K. Shanthi and Ors.* (supra), wherein the Hon'ble Apex Court held that the Court has the power to order further investigation. It was in the case where the application was made for further investigation. However, such power is required to be exercised with caution and only in exceptional cases. There cannot be any dispute so far as the said proposition is concerned. The said judgment does not restrict the power of the Court to direct further investigation. She has also relied upon the judgment in the case of *Venubhai Haribhau Malviya* (supra).

19. In the present case, Exh.20 application was filed. It is stated that Section 353 of Cr.P.C. is added during the course of investigation. It is seen that thereafter the accused persons had been to the school during school hours and created ruckus in the school. They not only prepared false and fabricated documents but also obtained orders on the basis of such documents. It is specifically stated that the seals four stamp allegedly used by accused persons were not seized by the police. The said are required to be collected and seized. The accused persons, even after filing of the charge-sheet, again used the said seals and stamps. They prepared forged agenda and prepared minutes of meeting by using the proceeding book etc. They filed an application on 27th August 2020 and produced those documents. All such documents are required to be seized and recovered and for that, direction to conduct further investigation is necessary.

20. The learned Court considered that the if the documents are forged and fabricated, then it is for the concerned authorities to take action by

invoking powers under Cr.P.C.. It is held that the informant is not an office bearer of the Trust, and therefore, he cannot say that the documents are false and fabricated. Such grievance can be raised only by an office bearer of the said Trust. If the investigating Officer has not found substance in the allegations of the informant so far as forgery and cheating, and therefore, has not filed charge-sheet under those sections, it is held that, there is no substance in the contention raised by the informant in the application, and has rejected the application on merits.

21. Considering the judgments discussed above, this Court finds that certainly this Court has the power to direct further investigation under Section 173(8) of Cr.P.C. Looking to the application in the present case it is stated that even after filing of the charge-sheet as per contents of application, there is use of alleged false and fabricated documents. The FIR is lodged in the year 2019. The Investigating Officer needs to investigate the matter on the basis of FIR. The application shows that the reasons for further investigation are given which have arisen after

filing of the charge-sheet. This Court finds that merely because the Court has the power to direct re-investigation, it is no ground to interfere with the order passed by the learned Sessions Court. No any illegality or perversity in the order as such is seen by this Court. Though on principle, this Court very well accept the argument of the learned Advocate for the applicant, on facts, this Court finds that no case is made out to direct further investigation under Section 173(8) of Cr.P.C. The application is devoid of merits, and for this reason, this Court does not find any substance in the present application. The present criminal application deserves to be dismissed. Hence, the following order:-

ORDER

Criminal Application stands dismissed and disposed off.

[KISHORE C. SANT, J.]

22. At this stage, learned Advocate for the petitioners seeks continuation of interim relief which is already in existence.

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23. Considering the said request, interim relief to continue for a period of six weeks from today.

[KISHORE C. SANT, J.]