



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4095 OF 2024

1. Shibin Krishnan
Age: Major, Occu.: Admin Manager,
Universal High School,
Chhatrapati Sambhajanagar,
R/o.B-1/29, Centre Pisadevi Road,
Jadhavwadi, Chh. Sambhajanagar.
2. Kalpesh Ramesh Phalsamkar
Age: Major, Occu.: Management
Representative, National
Education Society, Mumbai.
R/o. Ground Floor, Dilaram Estate,
S. V. Road, Goregaon (East),
Mumbai.
3. Suresh Dattani
Age: Major, Occu.: Member,
National Education Society, Mumbai.
R/o.11, Sudama, 6th Floor, 214,
Waleshwar, Malabar Hills Mumbai.
4. Smt. Ritu Chirag Patel
Age: Major, Occu.: Secretary,
National Education Society, Mumbai,
R/o. 1st Floor Swati, Opposite Santacruz,
Link Road, Sarojani Naidu Road,
Mumbai.
5. Pinky Jai Pujara
Age: Major, Occu.: Member,
National Education Society, Mumbai,
R/o.Asha Niketan, 3rd Floor,
Baptista Road, Vileparle, Mumbai 56.
6. Neelam Sudhir Lal,
Age: Major, Occu.: Joint Treasurer,
R/o. Ganganivas First Floor,

V. M. Mehta Road, N.M.I.N.S.J.V.P.D.
Scheme, Vileparle (W), Mumbai-400056.

7. Rupa Suresh Dattani,
Age: Major, Occu.: Treasurer,
National Education Society, Mumbai,
R/o.11, Sudama, 6th Floor, 214.
Walkeshwar, Malabar Hills, Mumbai 6.
8. Dhvani Jesus Lal
Age: Major, Occu.: Vice President,
National Education Society, Mumbai,
R/o. Ganganivas 1st Floor, G.M. Mehta Road,
N.M.I.N.S., J.D.P.D. Scheme,
Vile Parle (W), Mumbai-400056.
9. Jesus Sudhir Lal
Age: Major, Occu.: President,
National Education Society, Mumbai
R/o. Ganganiwas 1st Floor, V.M. Mehta Road,
N.M.I.N.S., J.V.P.D. Scheme,
Vile Parle (W), Mumbai-400056.
(GPA for Petitioner Nos.4 to 6 and 8)
10. Seema Gupta,
Age: Major, Occu.: Principal,
Universal High School, Chh. Sambhajinagar,
R/o. Universal High School, T-1, Chikalthana,
Chh. Sambhajinagar.

.. Applicants

Versus

1. The State of Maharashtra
Through Commissioner of Police,
Chhatrapati Sambhajinagar.
2. The Police Station,
MIDC CIDCO,
Chhatrapati Sambhajinagar.
3. Pravinkumar Anilkumar Jaiswal
Age: 52 years, Occu.: Business,
R/o.678, Sahyadrinagar, N-5, CIDCO,
Chhatrapati Sambhajinagar.

.. Respondents

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- Mr. Girish K. Thigle, Advocate for the applicants.
- Mrs. P. R. Bharaswadkar, APP for respondent Nos.1 and 2/State.
- Mr. Rahul G. Joshi, Advocate for respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

**RESERVED ON : 11 SEPTEMBER 2025
PRONOUNCED ON : 16 OCTOBER 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. The applicants, who have been arrayed as accused seeks quashment of the complaint bearing Miscellaneous Criminal Application No.1205 of 2024 and impugned order passed by learned 5th Judicial Magistrate First Class, Chhatrapati Sambhajinagar and the FIR bearing Crime No.491 of 2024 lodged with MIDC, CIDCO Police Station, District Chhatrapati Sambhajinagar at the outcome of the order passed by learned Judicial Magistrate First Class for the offences punishable under Sections 341, 342, 506 read with Section 34 of Indian Penal Code, under Sections 16, 17, 34, 35 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the “RTE Act”) and under Section 75 of the Juvenile Justice (Protection and Care of Juveniles) Act, 2015 (hereinafter referred to as the “Juvenile Justice Act”).

2. Applicant Nos.2 to 9 are the Directors of school by name Universal High School which is one of the entities of National Education Society, Mumbai. Applicant No.1 is the Administrative Manager of the school. Applicant Nos.2 to 9 are the office bearers of the National Education Society, who manage various educational institutes across Maharashtra and other places. The contribution of the society in the field of education is since long. The present FIR and the criminal proceedings are the outcome of the pending civil litigation *inter se* between the parties, which accrued on account of dispute raised by certain individuals against the school. The dispute pertains to the quantum of the fees, the purported non consideration of exemption or reduction of the fees. The applicants' school has not received any grant of whatsoever nature from the State Government. It is self-financed school. The institution/school vide letter dated 20.09.2021 and other letters had repeatedly requested respondent No.3 to clear the fees of his ward, however, there was resistance on the part of respondent No.3. Even as per the provisions of Right to Education Act and other regulations, it is incumbent for the parents to pay the fees and the dispute if any can be entertained by the competent authority. There is no question of exempting any parent from paying the fees of the school. Respondent No.3 managed to put pressure on the school from every possible corner by raising grievances. Even the dispute regarding the fees

had come before this Court by way of Writ Petition No.13781 of 2021 along with Writ Petition No.8829 of 2023 and Writ Petition No.2626 of 2022. Various orders passed by this Court would indicate that the dispute of fees has specifically kept open to be determined by the appropriate authorities. Respondent No.3 and similarly selected few parents have not cleared the fees of their ward, whereas majority of the parents have paid the fees punctually. The allegations in the FIR are to victimize the school. Under political pressure, the impugned order dated 09.11.2023 came to be passed by the State Education Department and it is under challenge before this Court. This Court by order dated 16.11.2023 has protected the applicants. Respondent No.3 along with another person had approached this Court by filing Contempt Petition No.483 of 2023 wherein an undertaking of petitioner No.1 therein has been recorded through natural guardian Pravinkumar Anilkumar Jaiswal that he would pay amount of Rs.2,11,799/- under protest. Despite said undertaking, respondent No.3 has not paid the said amount and ultimately the undertaking was requested to be withdrawn. Then this Court has modified the order of recording the undertaking. Under such circumstance, it appears that respondent No.3 herein had approached learned Judicial Magistrate First Class by filing Criminal Miscellaneous Application No.1205 of 2024 for directions to police to carry out the investigation under Section 156(3) of the Code of

Criminal Procedure. The said application came to be allowed on 06.09.2024. Thereafter, the FIR vide Crime No.491 of 2024 has been registered. Hence, this petition.

3. Heard learned Advocate Mr. Girish K. Thigle for the applicants, learned APP Mrs. P. R. Bharaswadkar for respondent Nos.1 and 2/State and learned Advocate Mr. Rahul G. Joshi for respondent No.3.

4. Learned Advocate for the applicants reiterating the contents of the application submits that the order that was passed by the learned Judicial Magistrate First Class below Exhibit-01 in Criminal Miscellaneous Application No.1205 of 2024 is cryptic. She has not considered whether the ingredients of the offence have been made out or not. Passing an order under Section 156(3) of the Code of Criminal Procedure is not an empty formality. In the entire application before the learned Magistrate there is no mention about the pendency of Writ Petition No.8829 of 2023. There is mention about Writ Petition No.15753 of 2023 and copy of the order has been annexed. Therefore, when a specific statement was made that the said writ petition is still pending, the Magistrate ought to have restrained herself from passing the order of investigation. At no point of time earlier in any petition, the point of mental harassment etc. has been agitated. It is an afterthought allegation and, therefore, when the said order of giving

direction under Section 156(3) of the Code of Criminal Procedure itself is illegal, the FIR needs to be quashed and set aside.

5. Respondent No.3 has filed affidavit-in-reply. Apart from reiterating the same contentions in his FIR, he states that the FIR is not the outcome of civil litigation between the parties. It is stated that in view of the letter issued to him and thereafter order passed by this Court on 16.12.2021 and as per that order, group of parents deposited amount of Rs.60,000/- in the school i.e. for two consecutive educational years subject to the decision of District Fees Regulatory Committee. He states that the Writ Petition No.13781 of 2021 came to be disposed of on 11.07.2023, Writ Petition No.2626 of 2022 came to be disposed of on 04.01.2024 and Writ Petition No.8829 of 2023 is still pending with this Court. These writ petitions are in respect of different subject matters than the FIR. The specific allegations have been made in the application as well as the FIR against the accused persons. Their role has been attributed. Certainly, it appears that the petitioners had taken the dispute as personal on the basis of fees. They have unnecessarily troubled his ward. Even after number of oral and written warnings, the episode did not stopped, but it was reflected in the harassment and ill treatment and, therefore, the applicants have committed offence under Section 17 of RTE Act as well as under Section 75 of the

Juvenile Justice Act.

6. Learned Advocate for respondent No.3 relies on the decision in **The State of Tamil Nadu, Rep. by its Principal Secretary to Government and others vs. All India Private Schools Legal Protection Society No.9**, decided by the Hon'ble Division Bench of Madras High Court in **W.A. No.3075 of 2021 on 19.07.2024**, wherein it has been observed that “Section 15 of RTE Act prohibits denial of admission to a child. This Court on many instances have come across cases whereby children have been denied admission on varied grounds. The object of the legislation is a Right to Free and Compulsory Education for Children i.e. the core feature of the legislation and the right of the schools to get their pending arrear fees or the technicalities in the WMIS system is not the centre of attention for this Court. It is observed that the arrear of fees can be collected in a manner known to law from the parents and the delay in order uploading the WMIS system can be cured through technical alterations but the education but the education of the child is and will always be the heart and soul of the legislation.... This Court can never allow a child to be stigmatised on the ground of non-payment of fees...” He submits that respondent No.3 was fighting for the fees structure that was adopted by the petitioners, but for that purpose, his son ought not to have been dealt

with in such a manner. Each and every incident has been quoted, but son of the petitioner was not allowed to attend the classes. He was stopped at the gate itself and asked to go home. His facility of school bus was also unnecessarily denied. The matter was taken till Hon'ble the Minister for Education and then by the intervention of various authorities, the way out was found, but still it has not changed the attitude of the petitioners. When *prima facie* case has been made out for investigation into the matter, the impugned order has been passed. It need not be interfered with.

7. Learned APP supports the argument by respondent No.3.

8. Both the learned Advocates are relying upon various orders of this Court as well as communications between the Education Department and petitioner/school, Government Resolutions etc.

9. The first and the foremost fact that is required to be seen is as to whether the order that has been passed in Criminal Miscellaneous Application No.1204 of 2024 by the learned Judicial Magistrate First Class, Court No.5, Aurangabad on 06.09.2024 suffers from legalities because it is the basis on which FIR has been lodged. If it is found that the said principles have not been adhered to by the learned Magistrate, then such FIRs based on the impugned order cannot be allowed to sustain.

We would consider the decision in **Om Prakash Ambedkar vs. The State of**

Maharashtra and others, [AIR 2025 SC 970], wherein guidelines have been given and note has been taken in respect of the earlier decisions. So also, comparison has been made between Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) with Section 156(3) of Code of Criminal Procedure (for short “CR.P.C.”). The first case that came to be considered is **Priyanka Srivastava vs. State of U.P., [(2015) 6 SCC 287]**, wherein Hon’ble Supreme Court held that prior to making an application to the Magistrate under Section 156(3) CR.P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3). The applications made under Section 156(3) CR.P.C. must necessarily be supported by an affidavit sworn by the applicant. Now, if we take the note of order that has been passed by the learned Magistrate, it does not refer to the fact that the learned Magistrate has considered whether there was compliance of Section 154(1) and 154(3) CR.P.C. It has been stated that in respect of incident dated 14.12.2023 wherein it was alleged that it was the case of poisoning of 100 students in the petitioner school in the food and water that was supplied. Complaint was filed by Education Officer Shri. Bharat Telgote on 16.12.2023. Only non cognizable offence was registered under Sections 284, 337 read with Section 34 of Indian Penal Code. Thereafter, even on the basis of complaint given by Deputy Director of Education, Anil Sable, the MIDC CIDCO Police Station had not

registered any offence, but then when he had approached Police Commissioner, Chhatrapati Sambhajnagar, it was stated by Assistant Police Inspector Vishnu Munde by his written communication dated 20.01.2024 that the complaint of the complainant i.e. present respondent No.3 has been included in Crime No.607 of 2023. Even after it was pointed out that those two incidences are different, yet no offence was registered and then respondent No.3 in his complaint states that he felt that now the complaint will not be taken. Then he made the complaint dated 24.01.2024, 09.02.2024 and 22.04.2024. Now, when all these facts have been contended, then there ought to have been a clear reason recorded by the learned Magistrate that when the police authorities are contending that the complaint of respondent No.3 has been made part of Crime No.607 of 2023, then whether directions to be given under Section 156(3) of Cr.P.C. would amount to having two FIRs on the same count. If the learned Magistrate was of the opinion that those two facts or incidences or complaints could not have been clubbed together and, therefore, case is made out for taking action under Section 156(3) of Cr.P.C., there ought to have been then the observations in respect of the same. Further, in **Om Prakash Ambedkar (Supra)** the incident was of the year 2012, then in paragraph No.29, it has been stated that it is necessary to discuss changes brought to the scheme of Section 156 of Cr.P.C. and by the enactment of

BNSS. After taking note of the changes those have been made and the comparison as well as taking note of the decision in **Priyanka Srivastava (Supra)** and **Babu Venkatesh vs. The State of Karnataka, (2022) 5 SCC 639**, it has been observed that :-

“34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr.P.C. by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.

35. Further, by requiring the Magistrate to consider the submissions made by the concerned police officer before proceeding to issue directions under Section 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs under Section 173. Mandating the Magistrate to consider the submissions of the concerned police officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner.”

10. Though the incident had taken place in 2012, the Hon’ble Supreme Court set aside the order passed by the learned Magistrate directing police investigation under Section 156(3) of the Cr.P.C. Here, in this case, the

learned Magistrate has passed the order on 06.09.2024. There ought to have been discussion as to whether the provisions of Section 156(3) of Cr.P.C. would be applicable or it would be under Section 175(3) of BNSS. Section 531 of BNSS deals with repeal and savings, whereby the Code of Criminal Procedure, 1973 was repealed. Sub section (2)(a) of Section 531 of BNSS reads thus :-

“Section 531. - Repeal and savings.

(1)

(2) Notwithstanding such repeal---

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;”

11. In the present case, the Criminal Miscellaneous Application appears to have been filed on 04.05.2024 i.e. prior to the BNSS coming into existence, yet taking into consideration the fact that the order that was passed on 06.09.2024, the learned Magistrate ought to have heard the police officer and that is the position that has been clarified in **Om Prakash Ambedkar (Supra)** by the Hon’ble Supreme Court. Therefore, the order suffers from application of mind. The learned Magistrate has not taken the fact that the Writ Petition No.8829 of 2023 in which interim stay has been

granted is still pending before this Court.

12. Now, it appears that in the earlier petitions there was no mention about the alleged incidences with the son of the informant in those petitions. How in such circumstances, the provisions of Juvenile Justice Act would come into play would be a question. The possibility of exaggeration cannot be ruled out and taking into consideration the duration from such incident to the date of the application, there is certainly inordinate delay and, therefore, case of the petitioner falls within the parameters laid down in **State of Haryana vs. Ch. Bhajan Lal and others, [AIR 1992 SC 604]**. Therefore, we proceed to pass the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The impugned order dated 06.09.2024 passed by 5th Judicial Magistrate First Class, Chhatrapati Sambhajnagar in Criminal Miscellaneous Application No.1205 of 2024 as well as the FIR bearing Crime No.491 of 2024 dated 11.09.2024 registered with CIDCO, MIDC Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Sections 341, 342, 506 read with Section 34 of Indian Penal Code, under Sections 16, 17, 34, 35 of

the RTE Act and under Sections 75 of the Juvenile Justice Act,
stand quashed and set aside as against the present applicants.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm