



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2674 OF 2024

Sayyad Pasha S/o Sayyad Ali,
Age-51 years, Occu:Service,
R/o-Fattepura, Ahmedpur,
Taluka-Ahmedpur, District-Latur

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
The Police Inspector,
Ahmedpur Police Station,
Taluka-Ahmedpur, District-Latur,
- 2) Chandrakant Devidas Bhadade,
Age-52 years, Occu:Service
as a Tax Inspector, Nagar Parishad,
Ahmedpur, Taluka-Ahmedpur,
District-Latur.

...RESPONDENTS

...
Mr. R.S. Shinde Advocate h/f. Mr. P.U. Gujrathi Advocate for
Applicant.

Mr. V.K. Kotecha, A.P.P. for Respondent No.1- State.

Mr. V.P. Latange Advocate for Respondent No.2.

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CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE OF RESERVING ORDER : 30th APRIL 2025

DATE OF PRONOUNCING ORDER : 25th JUNE 2025

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

1. Present Application has been filed under Section 482 of the Code of Criminal Procedure for quashing the First Information Report (for short "the FIR") vide Crime No. 213 of 2024 registered with Ahmedpur Police Station, District-Latur on 4th April 2024, for the offence punishable under Sections 415, 464, 468, 463, 470, 471 of the Indian Penal Code.

2. Heard learned Advocate Mr. Shinde holding for learned Advocate Mr. Gujrathi for applicant, learned APP Mr. Kotecha for Respondent No.1- State and learned Advocate Mr. Latange for Respondent No.2.

3. Learned Advocate for the applicant has vehemently submitted that though at present respondent No.2 in his official capacity as Tax Inspector of Municipal Council, Ahmedpur has lodged the report on behalf of the Municipal Council against the applicant, yet it appears that he had not considered the history regarding the earlier FIR and the order passed by this Court. The applicant came to be appointed on 14th October 2008 with the Municipal Council. He had submitted the T.C. and the mark-sheet

of his S.S.C. examination of 1988. It is alleged that he has forged and prepared false documents to show that he passed the examination. In fact it is alleged that he is dropout of 8th standard and has not taken further education. But in that respect one Asad Rafiyoddin Tamboli had filed Criminal Miscellaneous Application No.98 of 2013 before the learned Judicial Magistrate First Class, Court No.1, Ahmedpur for sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure wherein alongwith the present applicant, other four persons were shown as accused. The said application came to be allowed and offence was registered vide Crime No.173 of 2014, with Ahmedpur Police Station for the offence punishable under Sections 464, 465, 472, 420 read with Section 34 of the Indian Penal Code. Though the charge-sheet has been filed in the matter, yet not any other report has been submitted by the investigating agency. In spite of this fact now present respondent No.2 has lodged the FIR vide Crime No.213 of 2024 on 4th April 2024 on the same ground that the present applicant had filed bogus documents/fake documents at the time of his entry in the service and had also received the promotion. Two FIR's are not maintainable for the same incidences or facts. He relies on the decision in *Tarak Dash Mukhrjee vs. State of*

Maharashtra, AIR OnLine 2022 SC 1393, wherein based on the earlier decisions the Hon'ble Supreme Court held that multiple FIR's lodged by the same person against same accused in respect of same set of facts and allegations amounts to abuse of process of law.

4. It is further submitted by the learned Advocate appearing for the applicant that the applicant was in fact given promotion in view of the fact that earlier in the year 1992, the applicant had knocked the doors of the Industrial Court, Solapur in proceedings No.13 of 1992. At that time the Municipal Council had not objected to the Petition and thereafter once again when the complaint has been filed by a third person, the inquiry was ordered. The said inquiry was conducted by three members committee. In the Criminal Miscellaneous Application and the FIR on the basis of the said application, the informant therein has stated that the committee members as well as co-accused (other than the present applicant) had helped the applicant. Those four persons had then challenged the entire act and the order passed under Section 156(3) of the Code of Criminal Procedure before this Court in Criminal Writ Petition No.1003 of 2014. It was decided on 6th February 2015 and the said FIR and

the order was quashed and set aside as against them. Even thereafter also no immediate action has been taken but the present FIR has been lodged in 2024 i.e. after a period of about ten years and therefore this delay is fatal. The Industrial Court, Latur, by order dated 12th October 2023, has protected the promotion of the present applicant by way of an interim order. When there are two FIR's on the basis of same facts, then the subsequent FIR will have to be quashed and set aside.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the present applicant was not party to Criminal Writ Petition No.1003 of 2014 and therefore, he cannot take advantage of the said decision. The concerned FIR prior in time was not by the present respondent No.2. The investigation is still going on and therefore, by the exercise of powers under Section 482 of the Code of Criminal Procedure, the investigation cannot be aborted. There is material with the Municipal Council as well as collected by the investigating officer to show that the applicant had produced fake documents at the time of fetching service and thereupon he has been promoted on the basis of those fake documents.

6. Here the main point is, as to whether the second FIR is maintainable and for that purpose there was no concrete information that was supplied by the applicant in his application nor we could get it in the police papers. In fact the Online status of Criminal Miscellaneous Application No.98 of 2013 showed that it is disposed of and therefore we had called the status report from the concerned Court as well as the police station. The report that has been received from the learned Judicial Magistrate First Class, Ahmedpur is that the complaint was sent for investigation under Section 156(3) of the Code of Criminal Procedure by order dated 31st July 2013 and on the basis of said order Crime No.173 of 2014 came to be registered. However, from the Online portal, Criminal Miscellaneous Application No.98 of 2013 was shown to be disposed of on 9th April 2025 because of the order passed by the Principal District and Sessions Judge, Latur dated 8th April 2025 for transfer of the cases which were pending before the learned Judicial Magistrate First Class (Court No.1) Ahmedpur. According to the learned Magistrate the said Miscellaneous Application was nominally disposed of due to the change in the establishment, however it was renumbered before the learned Additional Chief Judicial Magistrate, Ahmedpur. Now

again those cases are transferred to the Judicial Magistrate First Class (Court No.1) by order dated 27th May 2025 passed by learned Principal District and Sessions Judge, Latur. Therefore the said Criminal Miscellaneous Application is still pending and he has stated that the charge-sheet is not yet received. The police station reports that though the FIR has been registered, it appears that in the register it is stated that the FIR has been cancelled/ set aside in view of the decision of this Court in Criminal Writ Petition No.1003 of 2014. The concerned police inspector admits that note has been taken without appreciating or understanding the order in the writ petition. Investigation has not been done and even the file is missing.

7. Thus, taking into consideration these aspects, it is to be noted that from the record of the police station, the said FIR is set aside by this Court and therefore, investigation was not carried out at all. At the cost of repetition, the said writ petition came to be disposed of on 6th February 2015. However, the applicant in fact could not have taken advantage of this order because the FIR was registered against five persons including the present applicant and there were only four petitioners in the said writ petition. Present applicant was not the petitioner before

this Court in the said writ petition. Therefore, the relief of quashing and setting aside the FIR was limited to the extent of those four petitioners only. The FIR ought to have been continued as against the present applicant and investigation ought to have been done. But even after the period of 10 to 11 years, there is no progress at all and also police were under the impression that the entire FIR has been quashed and set aside. Here we would like to rely on *Sakiri Vasu vs State Of U.P. And Others*, wherein it has been observed thus----- para of monitoring investigation-----

“As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself).”

8. That means, it is the statutory duty or bounden duty of the Magistrate to monitor the investigation. Periodically, the Magistrates who had sent the complaints for investigation under Section 156(3) of the Code of Criminal Procedure are required to monitor the investigation in such matters. Even otherwise also, as per the law when the FIR has been registered, it should be taken to its logical end in respect of all the accused persons

named therein. In respect of some of the accused persons, the investigating officer may not get evidence and therefore, he may resort to Section 169 of the Code of Criminal Procedure. But in that case also an intimation will have to be given by the investigating officer to the Judicial Magistrate First Class/ Magistrate. In respect of all the accused persons if at all there is no evidence or he comes to the conclusion that the FIR is falsely instituted, then appropriate summary will have to be filed (Summary in nature of A, B, C and D, as the case may be). The Magistrate may in that case call the informant/ complainant and thereby invite objections. The complainant may then file protest petition and that will have to be dealt with as per the procedure of law. The Magistrates cannot keep such application pending for report for years together without any communication or reminding the investigating officer/police that such offence is still under investigation. We are also taking note of the fact that there is always a periodical inspection of the police station by the Sub Divisional Police Officer level officer or by the District Superintendent of Police/Commissioner of Police himself. How in such inspections these higher authorities are forgetting as to how many matters are pending for investigation for years together. There should be an attempt by them to direct the

concerned investigating officer to complete the investigation in a particular period and taking appropriate action.

9. Now as aforesaid, the investigation in respect of earlier offence is concerned, the police are clueless and the file is missing. The applicant cannot be allowed to take advantage of the same. Another fact to be noted is that the earlier complaint is by an agriculturist by name Asad Rafiyoddin Tamboli. We are not concerned, in what capacity he had filed the complaint but certainly any person can set the law in motion when such person has cheated the Government or the public office where public money is involved. But herein this case, the FIR is lodged by the public officer from Municipal Council in his official capacity. That means, the informants are different in both the cases. The ratio laid down in *Tarak Dash Mukhrjee vs. State of Maharashtra*, (supra), is not applicable then to the facts of the present case. In *Tarak Dash Mukhrjee vs. State of Maharashtra*, (supra), it was the case of multiple FIR's lodged by the same person. That means the informant in all those FIR's was same and therefore, it was held that such multiple FIR's lodged by same person against same accused in respect of same facts and allegations, amounts to abuse of process of law. We would like to rely on the

recent decision in *State of Rajasthan vs. Surendra Singh Rathore, (Criminal Appeal No.--- of 2025 (Arising out of SLP (Cri.) No.16358 of 2024) decided by the Hon'ble Supreme Court) on 19th February 2025*, wherein also decisions of the Hon'ble Supreme Court given earlier were considered, to name few of them, *Anju Chaudhary vs. State of U.P., (2013) 6 SCC 384*, *Kari Choudhary vs. Sita Devi, (2002) 1 SCC 714*, *Upkar Singh vs. Ved Prakash, (2004) 13 SCC 292*, *T.T. Antony vs. State of Kerala, (2001) 6 SCC 181*, *Nirmal Singh Kahlon vs. State of Punjab, (2009) 1 SCC 441*, and then in respect of permissibility of the registration of the second FIR is concerned, following principles have been laid down:-

"9. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:

9.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2 When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.

9.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5 Where the incident is separate; offences are similar or different.”

10. One more aspect that is required to be considered in respect of present FIR is that in between the earlier FIR and the present FIR, the present applicant was promoted, though now the point ultimately comes that he had produced certain forged documents at the time of inception of his service. Even at the time of promotion, he has produced the same documents as it appears to be from the papers of the investigation made up till now in respect of present FIR and therefore, we do not take this to be a fit case to quash and set aside the FIR.

11. The Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE