
(2015) 02 BOM CK 0095

In the Bombay High Court

Case No : Criminal Writ Petition No. 1003 of 2014

Baburao and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156[3], 200
Penal Code, 1860 (IPC) — Section 120[3], 193, 203, 34, 420
Prevention of Corruption Act, 1988 — Section 19[1]

Citation : (2015) ALLMR(Cri) 4284 : (2015) 2 BomCR(Cri) 278

Hon'ble Judges : A.M. Badar, J.; S.S. Shinde, J.

Bench : Division Bench

Advocate : V.P. Latange, for the Appellant; S.G. Chincholkar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith heard with the consent of the parties.

2. This Criminal Writ Petition is filed praying therein for quashing and setting aside the Private Complaint M.A. No. 98/2013 filed before the Judicial Magistrate First Class, Ahmedpur, District Latur and the First Information Report No. 173/2014, which is registered with the Ahmedpur Police Station as per the directions issued by the Judicial Magistrate First Class, Ahmedpur, Dist. Latur, under Section 156[3] of Criminal Procedure Code for the offence punishable under Section 464, 465, 472, 420, 120[3], 193, 203 r/w. 34 of Indian Penal Code to the extent of Petitioners.

3. It is the case of the Petitioners that, Petitioners No. 1 and 2 are the persons, who were serving in the Municipal Council, Ahmedpur at the relevant time and petitioner Nos. 1 and 2 are retired from services in the month of February, 2012 and in the Year 2013 respectively. The Petitioner No. 3 is still in service on the post of Junior Engineer and Petitioner No. 4 has been appointed in the office of

Ahmedpur Municipal Council in the Year 2009 and as such at the relevant time of the alleged offence, he was not in the office of Municipal Council.

4. It is further the case of the Petitioners that, the Respondent No. 2 original complainant had filed a Private Complaint against the Petitioners and other co-accused namely; Sayyad Pasha being M.A. No. 98/2013, before the Judicial Magistrate First Class, Ahmedpur, Dist. Latur for the offences punishable under Section 464, 465, 472, 420, 120[3], 193, 203 r/w. 34 of Indian Penal Code. It is the case of the original complainant that, co-accused Sayyed Pasha s/o. Sayyed Ali, who has completed his education upto 8th Standard, and thereafter he has left his education. But the said Sayyed Pasha s/o. Sayyed Ali in the Year 1988 has obtained a certificate of SSC Board and also marks memo which shows that he has passed SSC Examination and also a forged Transfer Certificate of School and on the said Certificate he has obtained job in Ahmedpur Municipal Council, Dist. Latur. As per the contention of the complainant, said Sayyed Pasha who is co-accused has never went to the School at Vasim, Taluka and District Vasim in Zilla Parishad School. But, he has obtained forged and fabricated Transfer Certificate of the said School bearing No. 216 and Registration No. 1825 dated 20.06.1988 and the said Transfer Certificate is prepared by the co-accused himself by making forged signature and stamps.

5. It is further the case of the Petitioners that, as per the contention of complainant the said co-accused namely Sayyed Pasha s/o. Sayyed Ali has never appeared for 10th Standard Examination, which was conducted in the month of March, 1988, from Nagpur Division but he has obtained a forged and fabricated marks memo bearing No. 236750 and Roll No. 134780 dated 20.06.1988. As per the contention of the complainant, one of the witnesses namely Sadashiv Karad has obtained all the necessary information from the Nagpur Divisional Board and also from the concerned School and from the said information it shows that the co-accused Sayyed Pasha has never appeared for 10th Standard Examination. After receiving the said information, the said witness No. 1 namely Sadashiv Karad has informed this fact to the Divisional Commissioner, Aurangabad and Collector, Latur. After receiving the said complaint, the Collector, Latur has informed to the Chief Officer, Municipal Council, Ahmedpur, Dist. Latur on 26.09.2008 to enquire in the matter and inform accordingly. It is the contention of the complainant that, the Petitioners have conducted an enquiry as per the direction given by the Collector, Latur, however, not recommended any punishment in spite of proving the fact that, the co-accused Sayyed Pasha has submitted forged and fabricated documents. The Petitioners have not lodged any complaint against the co-accused Sayyad Pasha, on the contrary, they helped Sayyed Pasha for preparing the said documents.

6. It is further the case of the Petitioners that, after presenting the complaint before the Judicial Magistrate First Class, Ahmedpur, District Latur, on 04.12.2013, the learned Judicial Magistrate First Class, Ahmedpur, District Latur by his order dated 31.07.2013, directed the investigation u/s. 156[3] of Criminal

Procedure Code. Accordingly, the Police Officer, Police Station Ahmedpur was pleased to register crime, as Crime No. 173/2014 for offence punishable under Section 464, 465, 472, 420, 120[3], 193, 203 r/w. 34 of Indian Penal Code. It is further the case of the Petitioners that, after receiving the summons from the Judicial Magistrate First Class, Ahmedpur, District Latur, the Petitioners have filed Criminal Misc. Application No. 54/2014, for anticipatory bail before the Sessions Judge at Ahmedpur. The said Application was heard on 30.07.2014, and the Sessions Court was pleased to allow the Bail Application on execution of personal bond and S.B. of Rs. 15,000/- each, and further observed that, applicants should make themselves available before the Investigation Officer for interrogation, and investigation purpose as and when called by Police Officer till investigation is over.

7. It is further the case of the Petitioners that, the Chief Officer, Municipal Council, Ahmedpur by his order dated 22.08.2008 has constituted a Committee consisting Petitioner Nos. 1, 2 and 3 as per the letter dated 22.08.2008; it was informed to Petitioner Nos. 1 to 3 that, they should enquire into the matter and submit a detail report to the Chief Officer, Municipal Council, Ahmedpur, Dist. Latur. It is further the case of the Petitioners that, as per directions of Chief Executive Officer, the Petitioners have enquired into the matter and they found that the co-accused namely; Sayyed Pasha s/o. Sayyed Ali was initially appointed in the Year 1988 with the Ahmedpur Municipal Council as a labourer on daily wages, and afterwards he was promoted as a Clerk in the Year 2002. At the relevant time, he has submitted forged documents to the Scanning Committee to which the Petitioners were not a part. It is further the case of the Petitioners that, in the report dated 24.10.2008, it was specifically mentioned that, after considering the documents and enquiry, the co-accused Sayyed Pasha Ali at the time of appointing him as a Clerk, submitted forged documents, and also opined that, considering, the service tenure of the co-accused Sayyed Pasha the leniency should be shown towards him.

8. It is further the case of the Petitioners that, from the complaint filed by the Respondent No. 2 complainant, it is alleged that, the Respondent Nos. 1, 2 and 3 had knowledge about the said forged document, and in spite of said knowledge they have helped to the co-accused Sayyed Pasha in appointing as Junior Clerk. The allegations against Petitioner No. 4 is that, he has not given the documents to the Respondent No. 2 in spite of making demands and refused to take the application. It is further the case of the Petitioners that, from the above allegations it is to be noted that, the Petitioner Nos. 1 to 3 being not the part of either appointing process nor in the promotion process, and therefore, they had no any knowledge about the forged document submitted by the co-accused Sayyed Pasha. It is only after the enquiry into the matter for the first time, it revealed to the Petitioners that, documents submitted by Sayyed Pasha are forged. It is important to note that, if the entire complaint filed by the Complainant is read, there is no evidence placed on record regarding the fact alleged that at the time of appointment in the year 1988, whether Petitioners were having any concern with the selection process, so they could know the

submission of forged documents for appointment by accused No. 1. Moreover, the appointment of co-accused Sayyed Pasha in the Year 1988 was not on the basis of forged certificate. The forged certificate has been submitted by the co-accused Sayyed Pasha at the time of promotion in the year 2002. At that time, the Petitioners herein were not part of the Standing Committee and as such knowledge about the forged document by the co-accused Sayyed Pasha could not be known to them, therefore, the allegations that the Petitioners helped the co-accused Sayyed Pasha in getting appointments are falsified. Except the allegations that the Petitioners helped the co-accused Sayyed Pasha in getting appointment on the basis of forged document, there is no iota of evidence to show either the knowledge or the authority of the Petitioners, which show that, they have knowledge about the alleged forged document, and in spite of such knowledge they are in conspiracy with the co-accused Sayyed Pasha in commission of the offence. It is further case of the Petitioners that, Petitioner No. 4 was appointed in the office of Ahmedpur Municipal Council in the Year 2009 as such, he could not have knowledge about the forged document submitted by the co-accused Sayyed Pasha who was appointed in the Year 1988 and subsequently promoted in the Year 2002. But the allegations against the Petitioner No. 4 is not giving the documents to the complainant No. 2, however, there is no any proof which shows that, the Petitioner No. 4 has rejected his application or there is any application requesting for copies of the documents, on record.

9. It is further the case of the Petitioners that, the complainant on 09.07.2013 had made an application to the Collector, Latur in which the complainant had made allegation against the co-accused Sayyed Pasha alone and requested permission to prosecute him. The involvement of Petitioners in the Private Complaint filed by the complainant is an afterthought, as it can be revealed from reading the contentions of the application filed to the Collector.

10. The learned counsel appearing for the Petitioners submits that, the petitioners are the law abiding citizen. On the contrary, Petitioner Nos. 1 to 3 had submitted the report to the Chief Officer, Municipal Council, Ahmedpur after conducting an enquiry. They did not hide any fact from the Higher Authorities and in the said report, the Committee has specifically mentioned that, the said co-accused Sayyed Pasha has submitted a forged document and only suggestion/opinion is given regarding showing the leniency considering his service tenure and family background. The Petitioners are only the members of the Committee and they are not the Authority, who can take action against the co-accused Sayyed Pasha. Therefore they have done their job as Committee members in their official capacity and to accept or reject the said report is upto the Higher Authorities. Therefore, the contention raised in the complaint are totally vague and it does not disclose how the Committee members are responsible for appointing Sayyed Pasha.

11. The learned counsel appearing for the Petitioners further submits that, even though the allegation made in the complaint filed by the complainant are taken

at its face value and read in its entirety, the offence under Section 464, 465, 472, 420, 120[3], 193, 203 r/w. 34 of Indian Penal Code, which is registered as per the order passed by the Judicial Magistrate First Class, Ahmedpur, District Latur, under Section 156[3], is not disclosed. Therefore, the learned counsel appearing for the Petitioners submits that, Petition deserves to be allowed.

The learned counsel appearing for the Respondent No. 2 relying upon the averments in affidavit in reply on behalf of Respondent No. 2, made following submissions:-

12. The learned counsel appearing for the Respondent No. 2 submits that, the challenge raised by the Petitioners to the order dated 31st July, 2014, passed by the Magistrate under Section 156[3] of the Criminal Procedure Code is misconceived and misplaced. Since the Petitioners have approached this Court for raising their challenge at very premature stage, inasmuch as, as on today, the investigation to the crime pointed out by the Petitioners is not completed and the matter is at the stage of investigation only. Hence, on this sole ground, the challenge raised by the Petitioners to the order passed by Magistrate is not sustainable, and therefore, deserves to be discarded at this stage of the matter.

13. It is further submitted that, that, the Petitioners, who were/are employees of the Ahmedpur Municipal Council have in fact assisted and helped the main accused namely Sayyad Pasha Sayyad Ali in preparing forgery and for playing fraud. Inasmuch as when an enquiry it was found that, said Sayyad Pasha had obtained the employment in Municipal Council, Ahmedpur by playing a fraud on the system, the Petitioners who were the members of the Enquiry Committee had no reason or business to make recommendation that, criminal action be not taken against the main accused namely Sayyad Pasha and he be retained in service by imposing some minor punishment. This recommendation made by the Enquiry Committee, of which, the Petitioner Nos. 1 to 3 were members itself shows their criminal act and mala fide intention. In that view of the matter, after noticing the aforesaid aspect of the matter, the deponent persuaded the matter before the appropriate authorities for taking necessary action in the matter. However, the concerned authorities including the District Collector, Latur were not inclined to take appropriate steps against the persons, who had played fraud on the system. In that view of the matter, the Petitioners had also made complaint to the concerned Police Station as well as the Higher Police Authorities, however, although, the cognizable crime was pointed out by the Petitioners no steps were taken, therefore, the Petitioners had no option except to file appropriate complaint before the concerned Magistrate, who upon going through the complaint has found that, the offence pointed out is cognizable offence has directed investigation in the matter upon due application of mind. Hence, there is no substance in the contentions raised by the Petitioners in the Writ Petition that, no criminal offence is made out against them upon perusal of the contents of the complaint.

14. It is further submitted that, the moment the fraud played by the accused

Sayyad Pasha by relying on false fabricated educational qualification certificate so as to obtain the employment was noticed by him, he immediately made appropriate representation before the concerned authorities for taking criminal action against the accused persons. Such representation was made to the District Collector also, accordingly, the District Collector has directed the concerned Municipal Council to submit the report, however, the Municipal Council informed the concerned Collector that, already an action of demoting the accused persons namely Sayyad Pasha Sayyad Ali has been taken, therefore, no further action is necessary and required. On the basis of said information by the concerned Municipal Council, the District Collector has informed the Petitioners that, already an action is taken against the accused person. However, unfortunately, all the authorities are not concerned or not interested to take criminal action against the main accused and other accused persons for their act of fraud on system.

15. It is further submitted that, it is pertinent to note that, the Petitioners, although, acting as public servant have illegally and by exceeding their limits have recommended that, no criminal action be taken against the main accused Mr. Sayyad Pasha, whereas having found that, the said Sayyad Pasha had in fact committed fraud on the system by preparing false and fabricated documents so as to seek the employment, the Petitioners ought to have stopped there and ought not to have recommended not to take criminal action for such act of fraud. The conduct on the part of Petitioners to recommend not to take criminal action against the person, who is apparently indulged in fraud amounts to criminal acts as pointed out in the complaint. Hence, there is no substance in the allegations made by Petitioners that, they are not liable for the offences alleged against them.

16. It is further submitted that, insofar as Petitioner No. 5 i.e. Mr. Satish Govindrao Bilapatte is concerned, against said accused it has been specifically alleged in the complaint that, he refused to supply the relevant documents to the respondent No. 2 i.e. the document, which is fabricated by the main accused and he also refused to accept the application tendered by respondent No. 2 for supply of relevant documents. As such, it is a very specific allegation against the Petitioner No. 5 that, he in collusion with other accused supported and helped the main accused to commit the criminal acts of fraud. In that view of the matter, the contention of petitioner No. 5 that, he jointed the services of Municipal Council, Ahmedpur in the Year 2009 has no relevance and meaning in the eyes of law.

17. It is further submitted that, it is a very specific case of the respondent No. 2 that, all the accused in the complaint in collusion with each other have committed the alleged offences. Hence, the role played by each of the accused needs to be thoroughly investigated to find out the truth. Hence, the contention raised by the Petitioners in the present Writ Petition deserves no consideration, that too, at the initial stage of investigation. Moreover, considering the conduct of Petitioners thereby making recommendation that, the accused Mr. Sayyad Pasha,

who has committed fraud on the system, shall not be prosecuted is nothing but criminal act of supporting the crime in collusion. Hence, the Petitioners are equally liable and responsible for the alleged crime, which is under investigation. Hence, Petition may be rejected.

18. We have given careful consideration to the submissions advanced by the learned counsel appearing for the Petitioners, learned Additional Public Prosecutor for the Respondent-State and the learned counsel appearing for the Respondent No. 2, with their able assistance, perused the allegations in the First Information Report, grounds taken in the Petition and also averments in affidavit in reply filed by the Respondent No. 2, the Respondent No. 2 has not disputed the fact that, Petitioner Nos. 1 and 2 are retired from services of the Municipal Council, Ahmedpur. The fact that, the Petitioner No. 4 is appointed in the Ahmedpur Municipal Council in the Year 2009 is also not disputed by the Respondent No. 2. It appears that, Respondent No. 2 filed Private Complaint against the Petitioners and other co-accused namely; Sayyad Pasha before the Judicial Magistrate First Class, Ahmedpur, District Latur, being complaint as M.A. No. 98/2013, for the offences punishable under Section 464, 465, 472, 420, 120[3], 193, 203 r/w. 34 of Indian Penal Code. The Judicial Magistrate First Class, Ahmedpur, District Latur, on 31st July, 2013 passed the following order:

"Perused complaint, heard the Advocate for complainant. The alleged offence are cognizable hence this matter be sent to P.I., Police Station, Ahmedpur for investigation u/s. 156[3] of Criminal Procedure Code."

Upon careful perusal of the order passed by the Judicial Magistrate First Class, Ahmedpur, it is abundantly clear that, even brief reasons are not assigned by the Court. The Supreme Court in the case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, that:

Where jurisdiction is exercised on a complaint filed in terms of Section 156[3] or Section 200 CrPC, the Magistrate is required to apply his mind, and in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156[3] CrPC for investigation against a public servant without a valid sanction order under Section 19[1] of the Prevention of Corruption Act, 1988 [PC Act]. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156[3] CrPC. should be reflected in the order, though a detailed expression of his views is neither required nor warranted. The Special Judge/Magistrate in the present case, has stated no reasons for ordering investigation."

The Bombay High Court, in the case of State of Maharashtra Vs. Shashikant, held thus:

When the Magistrate passes order directing investigation under Section 156[3] of

Cr.P.C., it is necessary that, prior to doing so, he should apply his mind to the case before him. Least that is expected of the Magistrate, is to verify from the averments of the complaint as to whether the ingredients to constitute the offence/s complained of have been made out or not. As such the order under Section 156[3] of Cr.P.C., should depict the application of mind. No doubt the Magistrate is not expected to give elaborate Judgment at that stage. However, the least expected is that the order should depict application of mind and as to how the complaint discloses the ingredients to constitute the offence complained of.

Therefore, order passed by the Magistrate is not in conformity with the observations of the Hon'ble Supreme Court in the case of Anil Kumar and others Vs. M.K. Aiyappa and another [supra] and the Bombay High Court in the case of State of Maharashtra Vs. Shashikant s/o. Eknath Shinde [supra].

[Underlines added]

19. So far as allegation of preparation of forged documents and signatures are concerned, those are against accused No. 1 Sayyad Pasha Sayyad Ali. Therefore, according to the complainant, accused No. 1 Sayyad Pasha Sayyad Ali has committed a serious offence and cheated the Government. He has also obtained employment in the Municipal Council, Ahmedpur on the basis of forged documents. According to the complainant, accused No. 1 Sayyad Pasha Sayyad Ali has prepared forged Transfer Certificate and Marks Memo. So far Baburao Nagnath Gulave, Gunwant Sambappa Menkudale, Shaikh Nijamoddini Azam and Satish Govindrao Bilapatte, who are the Petitioners in the Petition are concerned, the allegations is that, these accused knew about forged documents prepared by the accused No. 1 Sayyad Pasha Sayyad Ali, and that on the basis of said documents he has secured employment on Class-III post in Municipal Council, Ahmedpur, even then no action is taken by them, and on the contrary, Petitioners recommended to take lenient view against said Sayyad Pasha, and also the Petitioner No. 4 has not performed his duty, and therefore, he is also responsible for the alleged offences mentioned in the complaint. It is further stated in the complaint that, present Petitioners-original accused Nos. 2 to 5 have prepared the false report and ensured that, applicant No. 1 remains unpunished for the serious offence of forgery committed by him.

Upon careful reading of the allegations in the First Information Report against the Petitioners in its entirety, the complainant has stated that, the petitioners knew about the preparation of the forged documents by the complainant, however, they helped him by preparing report and recommended that, no action should be taken against him.

20. We have carefully considered the allegations in the First Information Report, and we are of the opinion that, even if the allegations in the complaint-First Information Report are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

The allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners.

21. It is not in dispute that, Petitioner Nos. 1 and 2 after rendering services stood retired and other two Petitioners are in the employment. It is not in dispute that, the Chief Officer, Municipal Council, Ahmedpur, by its order dated 22.08.2008 has constituted a Committee consisting Petitioner Nos. 1, 2 and 3 so as to enquire into the allegations against the accused No. 1 Sayyad Pasha Sayyad Ali and they have submitted a detailed report to the Chief Officer, Municipal Council, Ahmedpur, District Latur. It is not in dispute that, as per the order of Chief Officer, Municipal Council, Ahmedpur, Petitioners have enquired into the matter and they found that Sayyad Pasha Sayyad Ali i.e. Accused No. 1 was, initially, appointed in the Year 1988 with the Ahmedpur Municipal Council as a labourer on daily wages and afterwards he was promoted as Clerk in the year 2002 and at the relevant time he has submitted forged documents to the Scanning Committee to which the Petitioners were not part of the said Committee. It appears that, it was specifically stated in the report that, after considering the documents it transpired that, Sayyad Pasha Sayyad Ali at the time of appointing him as a Clerk submitted forged documents. Petitioners have placed on record copy of the report dated 24th October, 2008 submitted by them to the Chief Officer, Municipal Council, Ahmedpur. The relevant portion from the said report, which is relevant for the purpose of deciding the present Petition is as under:

22. Upon careful perusal of the afore mentioned portion from the report submitted by the Committee and also exclusions reached in the said report, the Committee observed that, upon perusal of the entire documents placed on record and from enquiry it is transpired that, documents submitted by Sayyad Pasha Sayyad Ali at the time of his appointment as recovery Clerk are forged. Therefore, it is abundantly clear that, the Committee in no uncertain terms observed that, the documents produced by the Accused No. 1 Sayyad Pasha Sayyad Ali at the time of his appointment as Recovery Clerk in the Municipal Council, Ahmedpur were forged. It appears that, the Petitioners were not part of the earlier Scanning Committee. By any stretch of imagination it cannot be said that, Petitioners have helped the accused No. 1 Sayyad Pasha Sayyad AN in preparing forged and fabricated documents. On the contrary, report submitted by the Committee consisting present Petitioners has clearly observed that, the documents submitted by the accused No. 1 Sayyad Pasha Sayyad Ali are false and fabricated. However, it appears that, the Committee considered the prayer of the accused No. 1 Sayyad Pasha Sayyad Ali that, lenient view may be taken since his wife, five children, aged parents, in all 9 family members are dependent upon him and he is "Karta" of his family. Therefore, the Committee recommended that, the Chief Officer, Municipal Council may consider the hardship of the accused No. 1 Sayyad Pasha and may not file criminal complaint, however, can revert him back from the post of Clerk to Class-IV.

The learned counsel appearing for the Petitioners has rightly contended that, the recommendation of the Committee is mere opinion expressed and was not binding upon Chief Executive Officer, Municipal Council, Ahmedpur. It was only recommendation and the Petitioners had no authority either to take decision or to file any criminal complaint against the accused No. 1 Sayyad Pasha.

23. In the light of the discussion herein above, in our view, even if the allegations in the complaint-First Information Report are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. The allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Hence, Criminal Writ Petition is allowed in terms of prayer clause "B".

24. Rule made absolute to above extent. The Petition stands disposed of accordingly.