

(2017) 12 BOM CK 0099
In the Bombay High Court
Case No : 01414 of 2017

Dr. Satish Sudhakar Patil

APPELLANT

Vs

The State of Maharashtra & Anr

RESPONDENT

Date of Decision : 21-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 202](#) - Saving of inherent powers of High Court - Postponement of issue of process
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 12 BOM CK 0099

Hon'ble Judges : Smt. Vibha Kankanwadi

Bench : SINGLE BENCH

Advocate : Santosh G. Chapalgaonkar, Sujeet D. Joshi, A.R. Kale, Vinod P. Patil

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith.
2. Both the applications arise out of same proceedings and the relief claimed in both the applications is the same, hence taken up for final hearing at the admission stage, with consent of all the parties.
3. Both applicants have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, in order to challenge the order of issuance of process against them in RCC No. 1640 of 2015 passed by the Judicial Magistrate (F.C.), Court No.21, Aurangabad, on 31/01/2017. Applicants in both the applications are original accused nos. 2 and 1 respectively. Respondent No. 2 in both the applications is the original complainant. I would prefer to address the parties as they are before the trial Court for the sake of convenience.
4. The factual matrix leading to the applications are that the complainant was serving as Associate Professor with Dr. Babasaheb Ambedkar Marathwada University, Aurangabad in 2009. Accused No. 1 had registered himself for Ph. D.

Complainant was assigned as "guide" for accused No. 1. Complainant has contended that he had helped accused No. 1 in research, guided him for publication of his research papers / thesis. It has been alleged that accused No. 1 and 2 have got the "guide" of the accused No. 1 changed against the provisions and consent of complainant. They have conspired with each other to get said order on 21022014. Said "change of guide" is illegal and has caused harm to the reputation of the complainant in educational field. The change of guide has affected the copy right of the complainant on the research papers / thesis. It was necessary to have signature on the progress report of accused No. 1 for the period between 2009 to 2013 or there should have been consent of the complainant. However, accused No. 2 has signed those reports, though he was not "guide" at that time. There is no mention of date on the reports. Accused Nos. 1 and 2 have thereby cheated and prepared false documents. Accused No. 1 is getting benefit of those documents. Therefore, complainant contends that accused Nos. 1 and 2 have committed offence punishable u/s. 420,465,471,34 of Indian Penal Code.

5. It appears that after the complaint was filed, verification has been recorded, when it was found that accused No. 1 is not resident of jurisdiction of concerned Magistrate, the report under Section 202 of Code of Criminal Procedure was called.

6. After the report was submitted, learned Magistrate has passed the order of issuance of process against both the accused. The said order is under challenge in these applications.

7. It has been argued on behalf of the applicants, that learned Magistrate failed to consider the fact that the complaint does not disclose ingredients of the offences mentioned in the complaint. Accused No. 1 had changed his guide because of the differences those arose between him and the complainant. He could see that the complainant was harassing him and because of the same he was not able to complete his Ph. D. within stipulated time. The change of guide was as per the rules and it has been done by the appropriate authority of the University. Complainant had even challenged the said order of change of guide before this Court, but the said writ petition was dismissed. The progress reports of accused No. 1 were not certified by complainant and therefore, they were required to be certified / signed by accused No. 2. A clear note thereof has been filed. Thesis is written by accused No. 1 and therefore he has every right over the same. There was no question of forging of the documents. Unnecessarily both the accused persons have been harassed by the complainant.

8. Per contra, it has been submitted on behalf of respondent No. 2 / complainant that the "change of guide" was against the rules and it was with ulterior motive to defame the complainant. Complainant was the guide of accused No. 1 from 2009 to 2014, therefore his signatures ought to have been taken on the research papers. The research papers submitted by the accused persons show that they have been signed by accused No. 2. He was not appointed as "guide" of accused

No. 1 during that period. He had no authority to sign those documents. This amounts to forging the documents. The "act of change of guide" was made in conspiracy and thereby complainant has been cheated. Learned Magistrate has taken into consideration the facts alleged in the complaint and report u/s. 202 of Code of Criminal Procedure. A proper and legal order has been passed and therefore there is no necessity to interfere with the same. When there is prima facie case made out, the complaint can not be quashed u/s. 482 of Code of Criminal Procedure.

9. What is not in dispute is that the accused No. 1 was prosecuting Ph. D. and complainant was his "guide" during 2009 to 2014. It appears that on his application, "guide" was changed by the University. As regards the point as to whether the said change was permissible or not, appears to have been settled by this Court; when the writ petition No. 9782 of 2014 filed by complainant has been rejected. Complainant now contends that the said change in "guide" was a part of conspiracy to cheat him. If we consider the relevant averments in the complaint, then it can be seen that complainant has stated that such change of guide, against the provisions, amounts to cheating the University. He has not given details as to how he has been cheated. He has not filed the complaint on behalf of University, nor he claims that he has been authorized by University to file the complaint. The complainant has not come with a case that there was any way direct transaction between him and accused No. 1 to assist accused No. 1 in the completion of Ph. D. In fact he was given / allotted as "guide" to accused No. 1 by the University. In fact a "guide" plays a very important role in the entire process viz., identification of the topic of research, formulation of the problem in a manner that is appropriate for the degree, guidance about the nature of research, modes available to make research and the standard expected, planning research so as to complete it in accordance with the time table specified by the university, writing the thesis and getting it examined. Therefore, the relationship between the guide and the Ph. D. aspirant should be cordial and faithful. However, in the present case, it appears that the relation between complainant and accused got strained. Accused No. 1 had approached the University for change of the "guide" and accordingly the change was effected. Accused No. 2 was allotted as "guide" to accused No. 1 after 2014.

10. It is now required to be seen whether the complaint filed by the complainant discloses the ingredients of the offences for which process has been issued. Under Sec. 415 of Indian Penal Code a person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived to deliver any property to him or to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In State of Kerala v/s. A. Pareed Pillai and another reported in AIR 1973 SC 326 it has been ruled that, "To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at

the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfil the promise". Further in *G. V. Rao v/s. L. H. V. Prasad and others* reported in (2000) 3 SCC 693 it has been held that, "As mentioned above, Sec. 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. That means intention to cheat is the basic ingredient". It has been observed by Apex Court in *Jaswantraai Manilal Akhaney v/s. State of Bombay* (AIR 1956 SC 575) that, "a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established". It was also observed in *Mahadeo Prasad v/s. State of West Bengal* (AIR 1954 SC 724) that, "In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered." Further in *S. N. Palnitkar and others v/s. State of Bihar and another* (AIR 2001 SC 2960), it has been laid down that, "In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating".

11. Thus, from the above said pronouncements, it is clear that the complainant should show intention to deceive (mens rea) as well as inducement. Here in this case, major ingredients of the offence defined under Sec. 415 of Indian Penal Code which is punishable u/s. 420 of Indian Penal Code are not shown by the complainant. Complaint does not spell out facts of alleged fraudulent or dishonest inducement by accused No. 1. Admittedly there was no direct dialog between accused No. 2 and complainant regarding this matter; therefore, there is no question of any inducement by him. It is to be noted that the change of guide was as per the request of accused No. 1 on account of the differences between him and complainant. Those differences went to such an extent that accused No. 1 was feeling that he is being harassed by the complainant. His request was approved by the University. Whether complainant ought to have been heard by the University before change was effected or not, will not add any ingredient of the offence to the facts of the case. At the most, even after considering it as it is for the sake of arguments, it would have given civil remedy to the complainant, which he has already exhausted, unsuccessfully. Said act to get change in his guide by accused No. 1 does not amount to "mens rea". Complainant has not disclosed the events of ulterior motive which according to him had prompted "change of guide" amounting to cheating. Mere use of expression "cheating" in the complaint does not amount to prima facie case for issuance of process. Even if for the sake of arguments it is accepted that the

change of "guide" was not permissible under the provisions of University Rules; yet the said change of guide, which has been done as per the orders of University will not amount to "cheating" the complainant. Therefore, the complaint was not at all disclosing offence punishable u/s. 420 of IPC.

12. Now turning towards offence punishable u/s. 465, 468 and 471 of IPC are concerned, complainant should show that forgery has been committed or a false document has been prepared and it has been used as genuine. In order to show that a document is a "false document" ingredient of Sec.464 of IPC should be considered. The condition precedent for an offence under Sec. 467 and 471 is "forgery". In *Md.Ibrahim & Ors vs State Of Bihar & Anr* (2009(8) SCC 751) the essential ingredients have been considered. "An analysis of Sec. 464 of Penal Code shows that it divides false documents into three categories: 1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised

upon him, know the contents of the document or the nature of the alteration. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses".

13. Taking into consideration the above ingredients of the offence, we are required to see whether these criteria are fulfilled in present case. Complainant has stated that the research papers / progress reports are the forged documents or false documents. Admittedly, the research is done by accused No. 1 and he has written the thesis. It is his literal work. Therefore, he has right over the said work. Those research papers can not be "false documents" for him. A person can not be said to have prepared "false document", when that document is owned and prepared by himself. Complainant has stated that since he was the guide of accused No. 1 for the period 2009 to 2014, his signatures ought to have been taken on progress reports. Merely because he has not signed it and those documents ought to have been under his signature, will not make those documents "forged" or "false documents". The facts disclosed by the complainant do not fit in those three categories noted in *Md. Ibrahim's* case (supra). Accused persons have submitted covering letter at the time of submission of those research papers / progress reports. Facts have been

disclosed therein. As per the accused persons, the progress reports of accused No. 1 were not submitted by the complainant and therefore, they were submitted, after the "guide" was changed. Nonmentioning of date on the papers does not make it "false document". Again there was no mens rea behind the act of not putting date on those papers.

14. Another fact is also required to be considered here. If we peruse the complaint, then it can reveal that it is very much cryptic. It does not disclose ingredients of any of the offences. It appears that the complainant has withheld the facts with some intention. Learned Magistrate ought to have considered all these aspects.

15. The act of issuance of process requires due application of judicious mind. The impugned order does not reflect that the learned Magistrate had applied mind before passing such order, much less judicious mind. In fact, the report u/s. 202 of Code of Criminal Procedure produced by Police was against the complainant. It has been submitted in the report that the change of guide was as per University rules. Learned Magistrate has only mentioned that she has perused the report; however, it can be seen that the order does not say as to why inspite of adverse report, she has concluded that there is prima facie case. No doubt, inspite of adverse report, learned Magistrate had power to take cognizance of the offence; but for that purpose there should be material before the learned Magistrate. Learned Magistrate while passing order of taking cognizance after inquiry u/s. 202 of Code of Criminal Procedure, should consider the grounds of negative report and thereafter, if any, offence is made out, should proceed to take cognizance. Clear reasons ought to have been assigned for that purpose.

16. In Md. Ibrahim (supra) it has been observed by Apex Court that, "This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes".

17. Further Learned Counsel for Petitioners has relied on the decision in Pepsi Foods Ltd. And another v/s. Special Judicial Magistrate and others [(1998) 5 SCC 749] wherein it has been observed that, "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence

before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused". Learned Magistrate in the present case also ought to have considered that because of taking cognizance on the basis of such complaint, the accused persons would be required to undergo the ordeal of facing the trial, unnecessarily. The possibility of filing of complaint out of rivalry and / or to take revenge ought to have been ruled out before taking cognizance.

18. In *Pepsi Foods Ltd.* [(1998) 5 SCC 749] (supra); it has been held that, "It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana and others v/s. Bhajan Lal and others* 1992 Supp (1) SCC 335, this court examined the extraordinary power under Art. 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they 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. Under Art. 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The powers conferred on the High Court under Articles 226 and 227 of the constitution and under Sec. 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Art. 227 or Sec. 482 of the Code it may not always be necessary to invoke the provisions of Art. 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to". The ratio is applicable here. Learned Magistrate has not passed a judicial order while taking cognizance of the matter. The said order of taking cognizance of the offences passed against both the accused is without application of mind. If the powers of this Court are not exercised and complaint is not quashed, then the accused persons would be required to face the trial unnecessarily. It has been further observed in the abovesaid case that, " No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Sec. 482 of the Code or Art. 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case

against him and still he must undergo the agony of a criminal trial". Therefore, this is a fit case, where the complaint should be quashed and order of issuance of process deserves to be set aside.

19. For the abovesaid reasons, I proceed to pass following order. ORDER (a) Both the applications are hereby allowed.

(b) Complaint in RCC No. 1640 of 2015 pending before Judicial Magistrate First Class, Aurangabad as well as order of issuance of process passed therein on 31012017 for the offence punishable u/s. 420, 465, 468, 471 read with Section 34 of Indian Penal Code against both the accused / present applicants are hereby quashed and set aside.

(c) Rule made absolute in the above terms.