

(2017) 06 BOM CK 0184
In the Bombay High Court
Case No : 5393 of 2016

Fulsing S/o Bhaulal Bahure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 468](#),
[Section 471](#), [Section 471](#)

Citation : (2017) 06 BOM CK 0184

Hon'ble Judges : S.S. Shinde, K.K. Sonawane

Bench : DIVISION BENCH

Advocate : S.G. Ladda, P.G. Borade

Judgement

1. Rule. Rule made returnable forthwith. Heard finally, with consent of the parties.
2. The applicant taking recourse of section 482 of the Criminal Procedure Code (for short "Cr.P.C.") preferred the present application with following prayer: "B. The FIR bearing Crime No. I-302/2016 U/Sec. 464, 465, 468, 470, 471, 472, 473 R/W 34 of the I. P. Code and also all further criminal proceedings taken-up on the basis of the said FIR both be quashed and set aside: and"
3. It is the case of the prosecution that, there was an election of Agricultural Produce Market Committee, Paithan (for short "APMC") for the year 2016-2017 to 2021-2022. Accordingly, programme of election was declared by notification dated 29-06-2016. The applicant was appointed as Returning Officer for conducting election. Moreover, one Shri L.M. Kasar was also appointed as Assistant Returning Officer for aforesaid election. The applicant was the Assistant Registrar, Co-operative Societies, Vaijapur, District Aurangabad. It has been alleged that as per election programme, the candidates presented their nomination forms for contesting the elections from the constituency reserved for economic weaker section. There were in all six persons, who filled in nomination

forms including persons, namely, Atmaram Rakhamji Thorat, Mohan Asaram Maske, Jaising Budha Chavan and Krishna Jagannath Laghane. As per requirement, vide notification dated 29-06-2016, all these certificates were essential to produce to show that they are members of economic weaker section. These certificates were issued by the office of Tahsildar, Paithan. The scrutiny of the nomination forms were carried out by applicant - Returning Officer. After scrutiny, the list of name of candidates was published and all these six persons including aforesaid four persons were declared as candidates to contest the election from the constituency reserved for economic weaker section. Meanwhile, on 30-07-2016 person, namely, Bapusaheb Bhimrao Kadam filed application to the concerned Tahsildar Paithan and requested to procure documents of certificates of the candidates issued by Tahsil Office showing them as member of economic weaker section. He requested to verify its genuineness and truthfulness. The concerned Tahsildar had issued letter for production of certified copies of economic weaker section Certificates furnished by these four candidates alongwith their nomination forms. Accordingly, relevant documents were forwarded to the Tahsildar for further enquiry. It was transpired that the certificates furnished by persons, Atmaram Rakhamaji Thorat, Mohan Asaram Maske, Jaising Budha Chavan and Krishna Jagannath Laghane, all were forged and fabricated documents. These certificates were not issued at all by the office of Tahsildar, Paithan. Therefore, concerned Tahsildar directed the applicant to initiate penal action against miscreants. But, the applicant did not proceed further, eventually, one Mr. Laxmikant Raghunath Ambekar Senior Clerk of Tahsil office Paithan filed the First Information Report (for short "FIR") against alleged miscreants as well as the persons, who were running the E-Service Centre and issued these bogus certificates to these candidates. There are also allegation against the applicant about the dereliction in official duty for initiating penal action against the miscreants. It has been alleged that the applicant intentionally for the sake of miscreants, did not take prompt action against them and he is also involved in this crime. Therefore, FIR came to be registered against the applicant and others under section 464, 465, 468, 470, 471 and 472 read with section 34 of the Indian Penal Code (for short "IPC") and set the criminal law in motion.

4. Being aggrieved by, the registration of crime on the false accusation, applicant approached to this Court invoking, inherent jurisdiction of this court under section 482 of the Cr.P.C. to redress his grievance. The applicant prayed to set aside and quash the impugned FIR bearing Crime No. I-302 of 2016 registered against him at Police Station, Paithan, District Aurangabad.

5. The learned counsel Mr. Ladda, for the applicant vehemently submitted that applicant has no concern at all with the alleged crime. He is innocent and unnecessarily, he has been embroiled in this false case. He submitted that no case is made out against the applicant. The impugned FIR is an abuse of process of law. According to learned counsel, applicant during the relevant period, was the Assistant Registrar, Co-operative Societies, at Vaijapur, and completed his 25

years stint without any stigma. He was appointed as Returning Officer on 29-06-2016 to conduct the election of APMC, Paithan. The election programme was declared, and nominations were to be presented upto 13-07-2016. The scrutiny of the nomination forms was to be carried out on 16-07-2016, and, valid list of nominations was to be published on 18-07-2016 and in case any appeal, final date for publication of list, was fixed as 30-07-2016. The learned counsel Mr. Ladda added that as per election programme, the applicant received six nomination forms to contest the election from the constituency reserved for economic weaker section. Pursuant to scheduled programme of the election, scrutiny of nomination forms were carried out and list of nominations was published, wherein six candidates were allowed to contest the election from the constituency reserved for the member of economic weaker section.

6. According to learned counsel, during scrutiny of nomination forms or up till final date of publication of list of valid nominations, there were no any objection raised on behalf of candidates, who were present at the time of scrutiny of nomination forms nor any Government personnels made attempt to bring to the notice of the applicant that impugned certificates were forged and fabricated. Therefore, there was no any reason for the applicant to have any doubt about the genuineness or otherwise of any such certificates. Thereafter, on 30-06-2016, concerned Tahsildar issued letter and asked for production of copies of certificates of candidates, who were contesting election from constituency reserved for member of economic weaker section. Accordingly, applicant immediately on 02-08-2016 forwarded all the relevant certificates to the concerned Tahsildar for further process. However, it was informed by letter dated 05-08-2016 that out of six certificates, five certificates were forged and fabricated one and same were not issued by the concerned Tahsil Office. It was also directed to initiate penal action against miscreants.

7. Mr. Ladda, learned counsel fervidly contends that impugned letter of the Tahsildar was received by the applicant on 06-08- 2016 in the evening and applicant was in dilemma and confused state of mind pertains to his locus standi to lodge FIR into the matter. According to learned counsel, offence came to be committed relating to the documents issued by the office of Tahsildar Paithan. Therefore, concerned Tahsildar, Paithan has an obligation to lodge the FIR. But, he directed the applicant to take steps for initiating penal action against the miscreants. The learned counsel Mr. Ladda has given much more emphasis on the conduct and demeanour of Tahsildar and submits that till FIR there were no any grievance against the applicant, but later-on concerned Tahsildar embroiled the applicant in this crime on the accusation that applicant failed to take prompt steps at the earliest for penal action against the miscreants. Learned counsel Mr. Ladda, drawn attention towards the letter issued by the applicant to the District Government Pleader for opinion in regard to lodging the FIR on his behalf or on the part of concerned Tahsildar against the miscreants. Meanwhile, impugned FIR came to be lodged at the instance of concern Tahsildar against the miscreants.

8. It has been submitted that considering the factual aspect there was no any ill intention of the applicant to shield the miscreants for committing offence. The allegations against the applicant are only to the extent that he has not taken any steps for lodging the FIR against miscreants, and on the basis of these facts, no any offence is made out against applicant. He has been falsely implicated in this case. Learned counsel Mr. Ladda explained the circumstances in detail. He has also given emphasis on the relevant provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1987 (for short "Rules of 1987") and submitted that once the list of valid nomination was published after its scrutiny in such circumstances, the applicant being Returning Officer has no legal right to initiate enquiry about the genuineness or truthfulness of the impugned certificates for penal action against the miscreants. Hence, he requested to quash and set aside the impugned FIR filed against applicant, which is an abuse of process of law. He prayed to allow the application.

9. The learned APP vociferously opposed the submission canvassed on behalf of applicant. He submitted that concerned Tahsildar vide his letter dated 05-08-2016 given information to the applicant that the certificates being members of economic weaker section produced with nomination forms in the election process were forged and fabricated one. These certificates were not at all issued by the office of Tahsildar Paithan. The documents of Certificates are illegal and fabricated one. Therefore, he directed the applicant to initiate penal action against the miscreants as the miscreants used the spurious documents for the purpose of election, which is to be held under the supervision of applicant. But, applicant did not take any prompt action to initiate penal action against the miscreants. It is evident from the conduct and demeanour of the applicant that he with malafide intention to shield the miscreants avoided to initiate penal action against them. Hence, the applicant has been arraigned as accused in this crime. According to learned APP, prima facie there are circumstances on record to make out the case against the applicant. Therefore, it would not just and proper to quash and set aside the impugned FIR registered against the applicant. Hence, he prayed for dismissal of application.

10. We have given anxious consideration to the submissions canvassed on behalf of both sides at length. We have also delved into the relevant documents produced on record. Admittedly, the applicant is arraigned as an accused in the impugned crime on the accusation of dereliction while discharging the official duty. According to prosecution, instructions were given to the applicant by the concerned Tahsildar to initiate penal action against the miscreants, for mischief to produce forged and fabricated document of certificates being member of economic weaker section for election process. It has been pretended that these documents were issued by the Government Authority i.e. Tahsil Office, Paithan. But, after due enquiry, it was transpired that, the impugned certificates were not at all issued by the office of Tahsildar, but the same were forged and fabricated by concerned candidates in connivance with persons, who were looking after and running the Maharashtra E-Service Centre. According to concerned Tahsildar, the

spurious documents were attempted to use by the miscreants during the course of election process of the APMC Paithan. The applicant was the Returning Officer of the concerned election of APMC, Paithan. Therefore, it was obligatory for the applicant to take steps for penal action against the miscreants. But, he failed to discharge his duty to initiate prompt action against miscreants. Therefore, the concerned Tahsildar drawn adverse inference against the bade his subordinate Shri Laxmikant Ambekar, Senior Clerk of Tahsil Office, Paithan to lodge complaint against miscreants, including the applicant. Accordingly, first informant, Shri Ambekar lodged the impugned FIR, the sustainability and propriety of which is agitated by the applicant in this application.

11. It is the settled rule of law that jurisdiction under Section 482 of Cr.P.C. has to be exercised very sparingly and with great deal of caution. It has been delineated that in exercise of its jurisdiction the High Court is not to examine the matter superficially but it is essential to be seen that the criminal proceedings are not a short-cut of other remedies available in law. Undisputedly, the inherent powers under Section 482 of the Cr.P.C. has to be exercised to prevent abuse of process of any court of law, or otherwise to secure the ends of justice. In the case of State of Karnataka Vs. L. Muniswamy, reported in 1977 Cri.L.J. 1125, the Hon'ble Supreme Court has laid down that in the exercise of the wholesome powers under Section 482 of the Code, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the court of law or that the ends of justice require that the proceedings are to be quashed.

12. In the matter of State of Haryana vs. Ch. Bhajanlal and others AIR 1992 SC 604, in para.104, it has been observed as below :- 104. Speaking for the Bench, Ranganath Mishra, J. as he then was in Madhavrao Jiwaji Rao Scindia V. Sambhajirao Chandojirao Angre (1988) 1 SCC 692 : (AIR 1988 SC 709) has expounded the law as follows : (at p.711 of AIR) " The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice is permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

13. In the instant case, as referred supra, there is an accusation against the applicant, only in regard to dereliction in official duty. It was informed to the applicant that the miscreants committed mischief and played fraud during the election process. Despite the same, applicant did not take action with due

diligence at the earliest and remained idle. Hence, adverse inference was drawn against the applicant which resulted into implicating the applicant in this case. In view of nature and gravity of allegations nurtured against the applicant, it is imperative to ascertain the genuineness and veracity of the accusation case against applicant and its repercussion by requisite enquiry. It is true that the Hon"ble Apex Court in the case of "State of Haryana V/s Bhajanlal reported in AIR 1992 SC 604 has delineated the guidelines in paragraph No. 10 as below: "109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

14. Keeping in view the aforesaid guidelines of the Apex Court, in the instant matter, it would imperative to appreciate the documents uncontroversial in nature produced on record to ascertain genuineness and veracity of the accusation made against applicant. These documents are letter correspondence exchange in between revenue authority and the office of applicant. In case an appreciation of these documents uncontroversial in nature if it is found that accusation against applicant are unsustainable and improbable, there would not be any impediment to proceed further for appreciation of these documents, while exercising the powers under section 482 of the Cr.P.C., to meet the ends of justice and to prevent abuse of process of law. It would profitable to take recourse of the observations of Their Lordships of Apex Court in the matter of Anita Malhotra Vs. Apparel Export Promotion Council and another, reported in (2012)1 SCC 520, in paragraph No. 20 of said Judgment it has been observed as below: "20. As rightly stated so, though it is not proper for the High court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code." In view of aforesaid observations, we do not find any legal impediment to appreciate the documents placed on record to ascertain genuineness and truthfulness of the allegations nurtured against the applicant about dereliction in his official duty.

15. As referred supra, applicant was the Returning Officer to conduct the elections of APMC Paithan for the period 2016-2017 to 2021-2022. The election programme was declared as per notification dated 29-06-2016. According to election programmable, nomination forms were to be presented upto 13-07-2016 and the scrutiny was to be held on 16-07-2016. Thereafter, it was directed to

publish the list of valid nominations of the candidates on 18-07-2016 and in case of any appeal final date for publication was given as 30-07-2016. It is not put into controversy that during the course of scrutiny of the nomination forms or upto publication of list of valid nominations by the applicant - Returning Officer no one else raised the objections pertaining to the genuineness or truthfulness of the impugned certificates. It is also transpired from the letter correspondence that upto issuance of letter dated 05-08-2016 on the part of concerned Tahsildar there was no communication to the applicant being Returning Officer of the elections of APMC Paithan that the impugned certificates which were produced ::: Uploaded on - 08/06/2017 ::: Downloaded on - 29/08/2017 15:21:30 ::: 15 Cri.A-5393-16-I accompanied with nomination forms by the candidates were spurious one. Therefore, as these certificates were seen issued by the office of Tahsildar, Paithan there was no reason for the applicant being Returning Officer to suspect about its genuineness. Therefore he proceeded further and published the final list of valid nomination as per rules prescribed under the law. Moreover, this factual aspect is also not put in controversy on behalf of respondent.

16. The attending circumstances reflects that after receipt of letter dated 05-8-2016 the applicant made endeavour to procure opinion of the concerned District Government Pleader in regard to his locus standi to initiate criminal action against the miscreants. It is fact that upto 11-08-2016, he did not receive any communication from the concerned AGP and eventually, he directed his subordinate i.e. Assistant Returning Officer Shri Kasar to lodge FIR as per directions of the concerned Tahsildar vide letter dated 05-08-2016. In the meantime, the impugned FIR came to be filed by one Mr. Ambekar, Senior Clerk of the concerned Tahsil Office, Paithan for the penal action against miscreants including applicant.

17. Intense scrutiny of the factual scenario categorically adumbrates that the applicant had no role to play for procuring the forged and fabricated revenue document under seal and signature of the concerned Tahsil Office, Paithan. But the allegations are in regard to failure to initiate prompt action against the miscreants as per directions of the Tahsildar vide letter dated 05-08-2016. There are no circumstances on record to doubt about the integrity of the applicant a responsible Government Personnel. It would hard to believe that there was ill-intention or malafide intention of applicant for not taking prompt steps with due diligence to initiate penal action against the miscreants. It would also fallacious to blame the applicant as an accomplice of other miscreants who played mischief of forgery in this crime. We are of the opinion that in case of negligence or misconduct in official duty, as alleged, the departmental enquiry against the applicant would be an proper remedy to penalise the applicant. But it would unjust and improper to take such harsh and drastic measures of lodging criminal proceeding against the Government Servant like applicant. It appears that initiating criminal proceeding against applicant is absurd and abuse of process of law. There are no incriminating circumstance on record to point out malafide or ill intention of the applicant to facilitate or shield the miscreants in this crime. We

find force in the submission advanced on the part of learned counsel Mr. Ladda that there were no allegation against applicant in the letter dated 05-08-2016 issued by the concerned Tahsildar. But subsequently the concerned Tahsildar drawn adverse inference and bade his subordinate Shri Ambekar, Senior Clerk to figure the applicant as one of the accused in this crime. The action of concerned Tahsildar appears to be unsustainable and incomprehensible one. It is preposterous to draw adverse inference against applicant only for the reason that he failed to comply with directions of the learned Tahsildar for initiation of penal action against miscreants at the earliest.

18. At this juncture, the submissions of learned counsel Mr. Ladda appears to be considerable one as offence committed pertains to revenue documents and therefore the learned Tahsildar would have to file FIR for penal action against the miscreants instead of giving directions to the applicant. The attending circumstances on record if considered minutely reflects that there was an attempt to pass buck for lodging FIR against the miscreants who have politically personalities. Therefore, the applicant cannot be blamed alone for delay in initiating penal action against miscreants. The revenue personnel and applicant made endeavour to escape from act to bell the cat. In such peculiar circumstances, ultimately, the applicant cannot be made scapegoat in the case. In view of the category of cases by way of illustration given by the Apex Court in Bhajanlal's case referred supra, we are of the opinion that allegations made in the FIR against the applicant if are taken at its face value and accepted in its entirety, do not prima facie constitute any offence. Moreover, allegations appears to be made in the FIR do not disclose any cognizable offence to justify an investigation by the Police Officer under Cr.P.C.. But impugned FIR against the applicants for the accusation made in it appears absurd and abuse of process of law. Therefore, we do not find any impediment to exercise the extraordinary jurisdiction to quash and set aside the impugned FIR involving the applicant in this crime. We are of the opinion that, in case, there was any negligence or dereliction in official duty or misconduct as alleged on the part of applicant, action to initiate departmental enquiry would sub-serve the purpose. But, in view of gravity of allegations in the present matter, the drastic and harsh action of initiating penal proceeding against Government servant seems not amenable to penalise the applicant.

19. In view of the aforesaid discussion, the Criminal Application stands allowed. Rule is made absolute in terms of prayer clause "B". The impugned FIR is hereby quashed and set aside to the extent of applicant only. Criminal Application stands disposed of accordingly.