


MHLA090015082023 	R.C.C.No.117/2023 The State of Maharashtra ..Vs.. Raja Patel & Ors.
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ORDER BELOW EXH.23

The present application is filed by accused No.2 namely Anjum Fatema Abdulla Khadari (*for short "the applicant"*) as per Sec.239 of the Code of Criminal Procedure, 1973 (*for short "Cr.PC."*) for discharging her from the offences punishable under Sections 420, 465, 467, 468, 471 r/w/Sec. 34 of Indian Penal Code.

2. According to the applicant, accused No.1 namely Raja Patel Abdul Baki is working as Asstt. Teacher at Jamhur High School since 01/07/1990 and complainant namely Mirza Wahedali Mohammad Ali (*hereinafter referred as "Complainant" for sake of brevity*) was the president of Liberal Education Society, Udgir till- 16/03/2012. Said Jamhur High School is one of the unit of Liberal Education Society. It is further contended that, complainant Mirza Wahedali Mohammad Ali was elected as Secretary and was holding post till March-2018.

3. Applicant has contended that, she has been implicated in the present crime by the complainant on a count that, she has appointed accused No.1 Raja Patel Abdul Baki as Head Master knowing that said accused No.1 has submitted false and fabricated documents such as mark sheet of B.Ed of University of Kanpur, Sanad of B.A. of Aligappa University

Tamilnadu and other educational as well as experience documents. Said fact was informed to the applicant by the complainant himself as soon as he received information from the concerned universities that documents submitted by accused No.1 are false and fabricated. At the time of his appointment, she was working as Secretary of said Liberal Education Society. She has intentionally sent the proposal to the Education Officer which was later on sanctioned by the Education Department and accused No.1 was appointed as full time Head Master in Jamhur High School, Udgir on 01/10/2018 and since then he is receiving salary and other monetary benefits.

4. It is contended by the applicant that, appointing accused No.1 in the said school was not decision of her own but of the executive body which by resolution dated 09/03/2019 appointed accused No.1 as full time Head Master. After said resolution, his proposal was sent to the Educational Department, Latur. Said proposal is also signed by present complainant and other body members. Hence, applicant cannot be held guilty alone for the present offences. She has contended that, as soon as she received information regarding false and fabricated documents of accused No.1, she has communicated to the concerned universities and also sent show cause notice to the accused No.1 in the capacity of Secretary of said Society.

5. She has further contended that, due to internal politics in the society she has been framed in the present crime by other office bearers of the society. There are disputes between

them regarding management of the society which are pending before the Asstt. Charity Commissioner, Latur. She has no direct or indirect role in the present crime. Hence, prayed to allow the present application.

6. Complainant Mirza Wahed Ali has appeared before the Court through Ld. Advocate Shri. P. M. Kone. He has filed his say below **Exh.28**. Ld. A.P.P. did not file any say. It is averred by the complainant that, applicant knew that accused No.1 was not having any educational qualification to qualify for the said post. She has intentionally appointed accused No.1 on the said school in order to get control in the school as well as in the said society. Due to her proposal, Education Department Latur has sanctioned the appointment of accused No.1 as the Head Master of the said school. It is contended that, despite knowledge applicant did not take coercive action against accused No.1 in respect of such false and fabricated documents. On the contrary, she has willfully concealed said facts from the other office bearers of said society.

7. It is also averred by the complainant that, applicant as well as accused No.1 have intentionally created false and fabricated documents under the name of concerned Universities and cheated the society as well as the Government. Therefore, prayed to reject the application.

8. Heard learned Advocate Shri. Z.K. Jagirdar for applicant. Perused the application, say and record of the case.

While deciding the present application, it is necessary to consider the facts and circumstances of the case along with the relevant applicable provisions of law. In this regard, Secs. 239 and 240(1), Cr.P.C. are to be read together. Which are reproduced here under -

“Sec. 239 provides -

“If, upon considering the police report and the documents sent with it under Sec.173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing”.

Sec. 240(1) provides -

“If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused”.

9. Keeping in mind the above provisions, I have gone through the first information report as well as statements of prosecution witnesses. Present case is outcome of order passed under Section 156(3) of Cr.P.C. in Criminal M. Application No.551/2021. Based on the direction, police have registered F.I.R. and investigated in the crime and thus filed final report

under Section 173 of Cr.PC against both accused. Admittedly, applicant is the Secretary of said society since the date of appointment of accused No.1. It is also admitted by the applicant that, she has received the information from Algappa as well as Kanpur University that the documents submitted by accused No.1 are false and fabricated. At that time she was working as the Secretary of said society which has control over the school in which accused No.1 was appointed.

10. It will not be out of place to mention here that, even strong suspicion about the existence of facts constituting the offence is sufficient to come to a conclusion of 'presuming that the accused have committed an offence' as provided U/Sec.240(1) of Cr.PC. Role of each accused will be established after the full trial based on the evidence which would be brought on record by the prosecution.

11. Hon'ble Supreme Court in **Manakshi Bala Vs. Sudhir Kumar, 1994 SCC(4) 142** has held that -

“the Magistrate is required to consider the police report and the documents submitted U/Sec.173 of Cr.PC. and he should take decision regarding discharge after hearing the both parties, he has to discharge the accused U/Sec.239 of Cr.PC. if the charge is groundless.”

12. In the present case, applicant needs to prima facie prove that charges levelled against her are groundless. She has contended that she is implicated in the present crime by other office bearers of said society and appointing accused No.1 as

Head Master was not decision of her own. She has also contended that, there are pending disputes between herself and other office bearers before the office of Charity Commissioner, Latur in respect of management of the society. However, she has herself admitted that she was and has been working as Secretary in the said education society since the time of appointment of accused No.1. Whether she is solely responsible in the appointment of accused No.1 will be decided after full trial. At this stage there are sufficient grounds against her as mentioned in the First Information Report. Further, applicant has not produced document showing pendency of their dispute before Charity Commissioner, Latur. Hence, at this stage it cannot be concluded that she has been falsely implicated in the present crime.

13. There are serious allegations against accused No.1 as well as applicant that they have intentionally created false and fabricated educational as well as other documents in order to secure appointment for accused No.1 as Head Master in the Jamhur High School, Udgir and by his appointment applicant wanted to have full control over the said school and thereby securing support in the management of Liberal Education Society. It is also necessary to mention here that, applicant did not take any legal action against accused No.1 despite knowledge that accused No.1 has submitted false and fabricated documents. In the capacity of Secretary she could have herself lodged F.I.R. against accused No.1. Instead she only issued show cause notice to the accused No.1. Therefore, there appears

reasonable suspicion and doubts on the conduct of accused No.2 i.e. applicant. Whether she has any role in creating those documents can only get clear after the full-fledge trial. Thus, at the stage it cannot be said that charges levelled against applicant are groundless.

14. As I said earlier, present case is outcome of order passed in Criminal M.A.No.551/2021. Ld. Predecessor after going through the prima-facie evidence on record has passed order under Section 156(3) of Cr.PC. directing police to register F.I.R. against applicant as well as accused No.1. Police have conducted detailed investigation in the present crime and filed final report before this Court for the offence punishable under Sections 420, 465, 467, 468, 471 r/w/Sec. 34 of Indian Penal Code. Prima facie, there are sufficient grounds to proceed against present applicant and accused No.1 for the offences mentioned above. I do not find charges to be groundless as there is sufficient material on record to proceed against accused persons. Hence, application being devoid of merits needs to be rejected. In the interest, I pass following order:-

ORDER

1.	Application is rejected.
2.	Both accused persons are directed to remain present before Court on next date for framing of Charge.

Place : Udgir.
Date 08/11/2024.

(N.J. Chavan)
Judicial Magistrate F.C. Udgir
(Court No.3)