MHSO140007702013

R.C.C. No.47/2013

State of Maharashtra
Vs.
Rajabai Bhosale & Ors.

ORDER BELOW EXHIBIT-25

The accused have moved an application under section 239 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.' for brevity) for discharging them from the offences punishable under section 406, 420, 465, 466 and 471 r/w section 34 of the Indian Penal Code (hereinafter referred as 'IPC' for brevity). They submitted that they have been falsely implicated by the informant in the false case. They have not committed any crime as alleged by the prosecution. In fact, accused No.1 is the Chairman of Mahatma Fule Pratishthan, Vairag (hereinafter referred as 'said Trust' in short) whereas accused No.2 is the Secretary of said Trust. This said Trust is running the school by name and style as Navin Secondary School, Dhamangaon(Du), Tal.Barshi Dist. Solapur. The informant was the Head Master of the said school. He was suspended and then terminated from service. That time, the dispute was going on between the accused and group of one Dr. Gautam Jagtap on the issue as to who among them are the real office bearer of the said Trust. The dispute goes in the Court of Assistant Charity Commissioner, Solapur and dispute is pending before it.

02. In fact, the accused are the legal office bearers of above said Trust. They are looking after the management of said Trust. The Assistant Charity Commissioner, Solapur or other Court has not prohibited the accused from looking after the management of said Trust. Thus, the accused are rightly and legally looking after the management of the said Trust. As the informant was indulged in the criminal activities so the accused in the management of the Trust and legal office bearers of above said Trust, suspended and then terminated the informant from the said school from the service of Head-Master. So to settle the score, the informant has filed false case and he involved these accused in false criminal case. In fact, from the charge-sheet and the documents annexed with it, no *prima facie* case is made out against the accused. Hence, prayed for discharging them under section 239 of Cr.P.C. for above said offences.

03. The Ld. APP filed the say beneath the application and thereby strongly opposed the application by submitting that the ample evidence is available against the accused to proceed against them. There are materials for framing charge against them. Hence, prayed for rejection of the application.

04. Heard learned counsel for both parties at length. The learned counsel for the accused filed the written notes of argument at Exh.30. I have gone through the written notes of

argument filed by the accused. They also relied upon the bunch of citations which are annexed with written notes of argument at Exh.30.

05. To decide an application for discharge under section 239 of Cr.P.C., the Court to only consider the police report and documents sent with it under section 173 of Cr.P.C. and the Court may examine to any witness and after giving an opportunity to being heard, if the Court comes to the conclusion that the charge against the accused is groundless, then he shall discharge the accused. To discharge the accused, the Court has to record the reasons for doing so.

06. To understand this, it would be proper to reproduce section 239 of Cr.P.C. for better convenience. Same is read as under;

> *If, upon considering the police report and the documents sent with it under section 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.*

07. After reading the provision, it appears to me that the Court has to form opinion for discharging the accused

that charge against the accused is groundless. However, the Court has to only peruse or read the police report and the documents sent with it under section 173 of Cr.P.C.. This provision nowhere speaks that the Court has to rely upon the document filed by the accused. This principle has been laid down by Hon'ble Supreme Court in the case of ***State of Orisa Vs. Devendranath Padhi***, 2004 ALL SCR(Cri) 494 which held in para no.14 that;

> *All the decisions when they hold that there can only be limited evaluation of materials and documents on record and shifting of evidence to prima facie find out whether sufficient ground exist or not for the purpose of proceeding further with the trial, have to be held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in* ***State Anti-Corruption Bureau, Hyderabad and another Vs. P. Suryaprakasham (1999 SCC (Cri) 373)*** *where considering the scope of sections 239 and 240 of the Code. It was held that at the time of framing of charge, what the trial Court is required to, and can consider are only the police report referred to under section 173 of the*

> *Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same whether the case be under sections 227 and 228 or under sections 239 and 240 of the Code.*

08. Considering the said principle laid down in ***Devendranath Padhi*** case, I have to only consider the charge-sheet and the documents sent with it and none of the documents filed by the accused. The accused have filed the documents with Exh.27. But I have to consider only the charge-sheet and documents sent under section 173 of Cr.P.C.

09. In the charge-sheet, the allegations against the accused are that the accused shown themselves as President and the Secretary of above said Trust, they prepared false document, they committed forgery, they prepared false letter pad and stamp and thereby suspended the informant from the said school. When in fact, the accused was not legal office bearers of said Trust, they were not having authority to suspend the informant from the post of Head-Master of

above said school.

10. The investigation came to be initiated against the accused when the informant filed the application under section 156(3) of Cr.P.C. and this Court directed to investigate the matter to Police Station Vairag under section 156(3) of Cr.P.C. on 05/10/2011, then after investigation the PS Vairag has filed charge-sheet against the accused for the offences punishable under section 471 and 193 of IPC. The prosecution has filed two documents with list Exh.43. These documents have been filed when the accused was shown no objection with Exh.42. These documents show that Gautam Vitthal Jagtap, Balwant Sahebrao Patil and one Gadshing were the trustees of above said Trust. These accused and one Sudhakar Shankar Gaikwad made an application to Assistant Charity Commissioner, Solapur for change report of the said Trust. The Assistant Charity Commissioner, Solapur has not accepted the change report and passed the order on 26/05/2004 and rejected the change report for want of prosecution. Moreover, there is order of Assistant Charity Commissioner, Solapur dated 03/09/2012 vide change application No.570/1996 which was filed by Shivaji Bhagwan Bhosale. The said application was rejected by the Assistant Charity Commissioner, Solapur. This means when the alleged information or the complaint was filed, these accused were not office bearers of above said Trust. Even also, when they used the letter pad of above said Trust for

suspending the informant, that time neither accused No.1 nor accused No.2 were President and joint Secretary of above said Trust. They prepared the false letter pad and false stamp to suspend or terminate the informant from the post of Head-Master of above said school.

11. The learned counsel for the accused argued that the offence punishable under section 193 of IPC is not made out. Even also, there is bar under section 195 of Cr.P.C. for taking cognizance against these accused.

12. No doubt, there is bar under section 195 of Cr.P.C. for taking cognizance against the accused if there is no such written complaint given by the public servant of concerned office or any person who is administratively subordinate to the concerned office. It is nowhere mentioned in the complaint or in the report that the accused have prepared the false document and same were given by them either before the Assistant Charity Commissioner, Solapur or the Hon'ble School Tribunal or Ld. Education Officer or any other forum who deemed to be the public office of public servant as per section 21 of IPC. If those documents are not given by the accused in any Court, then obviously there is no bar under section 195 of Cr.P.C..

13. It would be proper to reproduce sub-section 1(b) of section 195 of Cr.P.C. to get the real sense of alleged

section. It is as under;

> *"1(b)- (i) of any offence punishable under any of the following sections of the Indian Penal Code, 1860, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
>
> *(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),*
>
> *except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."*

14. After minute reading of this section, it appears that the alleged offence would be made out and that required complaint filed by the concerned public servant in writing or any other public servant who is administratively subordinate. That required that, that offence should be committed in any Court or in any proceeding in which evidence is recorded. None of the document has been used in any proceeding or

evidence has not been led in any proceeding on alleged document by showing to be the President or the Secretary of above said Trust. Thus, there is no bar under section 195 of Cr.P.C. to proceed against the accused. The learned counsel for the accused relied upon the *ratio* laid down in ***Pandurang Tukaram Thakre Vs. State of Maharashtra 2008 ALL MR (Cri) 2420***. In this *ratio,* the facts were that the accused were with common intention committed fraud and by writing false proceeding submitted the change report under section 22 of the Bombay Public Trust Act before the Assistant Charity Commissioner, Akola.

15. However, in this case, there is no such allegation that the accused have furnished false document in any proceeding before the Court of law. Thus, the facts of the present case and ***Pandurang*** case are altogether different. With due respect, I have to say that the *ratio* laid down in ***Pandurang*** case is not applicable to the present case in hand.

16. The learned counsel for the accused argued in respect of De-facto doctrine and submitted that any act committed by accused when the dispute is in the Court, then his act would be protected on the doctrine of De-facto doctrine.

17. He relied upon the *ratio* laid down in ***Hislop Education Society Vs. Presiding Officer, University***

College Tribunal, Nagpur & ors 2009(5) ALL MR 776 in which the Hon'ble Bombay High Court held in para No.18 that;

> *"I have carefully considered the rival contentions in the light of these judgments. The disputes between various faction in trust or the societies which manage educational institutions have become very common. Very rarely elections to bodies managing such institutions are held smoothly leading to smooth transition from the old to new body. Instances of various factions taking their factional fights to such for a as may be available, including the Courts and the Charity Commissioner are plenty. It is also a fact that such petitions or litigation cannot be disposed of or does not get disposed of promptly. If it were to be held that in the intervening period there is vacuum, it would obviously lead to anarchy and mismanagement in the affairs of the institutions which are run by such societies or trusts. Therefore, as observed in the judgments referred to by the learned counsel for above, "de facto doctrine" has taken birth out of necessity to maintain a continuity of authority in management of affairs of such societies or trusts."*

18. In this case, the accused have not shown any necessity that why they have made such letter pad and stamp and thereby suspended the informant from his service. Even there is no record in the case that that time these accused were temporarily holding the post of President and the

Secretary by the order of Court and with the aid of said order, they have prepared letter pad and stamp and thereby suspended the informant. If there is no such, then they cannot take the benefit that their orders are protected from de-facto doctrine. In fact, the acts of the accused are not made out of necessity.

19. In ***Hislop*** case, the Hon'ble Bombay High Court given the example that how the doctrine of de-facto doctrine is applicable. The Hon'ble Bombay High Court held in para No.17 that;

> *"We are aware that the finding that the second respondent could not have been sworn in as the Chief Minister and cannot continue to function as such will have serious consequences. Not only will it mean that the State has had no validly appointed Chief Minister since 14-5-2001, when the second respondent was sworn in, but also that it has had no validly appointed Council of Ministers, for the Council of Ministers was appointed on the recommendation of the second respondent. It would also mean that all acts of the Government of Tamil Nadu since 14-5-2001 would become questionable. To alleviate these consequences and in the interest of the administration of the State and its people, who would have acted on the premise that the appointments were legal and valid, we propose to invoke the de facto doctrine and declare that all acts, otherwise legal and valid, performed between 14-5-2001 and today by the second respondent as Chief Minister, by the members of*

the Council of Ministers and by the Government of the State shall not be adversely affected by reason only of the order that we now propose to pass."

20. This is not the case here that the acts of the accused should be protected by using de-facto doctrine. Hence, there is no force in the contention of the accused that they be protected from it.

21. The learned counsel for the accused also argued that by the management and with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 & its Rule 1981. But as mentioned in the written notes of argument about the management, section 22 of the Maharashtra Public Trusts Act and the provisions of the above said Act, I am of the opinion that when the accused were not in the management, then they cannot take the benefit of the provisions contained in either Maharashtra Public Trusts Act or the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 & its Rule 1981 or S.S. Code as mentioned by the learned counsel for the accused. The record also shows that the accused made letter head of above said Trust, accused No.2 has issued letter to the informant for suspending him under the authority of Secretary of above said Trust and thereby terminated the informant from the post of Head-Master of above said school. The accused have

made false document with intend to cause damage or injury to the informant. They used such document as genuine which they knowing or has reason to believe to be the forged document. Thus, I am of the opinion that there are grounds to frame charge against the accused. The charge against the accused is not groundless. Thus, the present application deserves to be rejected. Hence, application Exh.25 is rejected.

Digitally signed by SANTOSH BHOLARAM VIJAYKAR
Date: 2025.01.06 11:43:16 +0530

Barshi
Date : 03/01/2025.

(S.B. Vijaykar)
Judicial Magistrate First Class,
Court No.1, Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Shri. S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Dictated on	:	03/01/2025
(d)	Transcription completed on	:	03/01/2025
(e)	Judgment /Order signed by P.O. on	:	04/01/2025
(f)	Judgment /Order uploaded on	:	06/01/2025