

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1465 OF 2017

1. Machindra Dattatraya Kokate,
Age 57 years, Occu. Service,
Parichar Library Department,
Arts, Commerce and Science College,
Lal Taki Road, Ahmednagar,
Dist. Ahmednagar.
2. Maruti Natha Toradmal,
Age 42 years, Occu. Service,
Vivekanand Scheduled Caste Boys Hostel,
Baradari, Taluka Nagar,
Dist. Ahmednagar.
3. Sheshrao Dnyandeo Sable,
Age 55 years, Occu. Auditor,
R/o Nishigandha Housing Society,
M.S.E.B. Colony, Bhosale Akhada,
Burudgaon Road, Ahmednagar
Dist. Ahmednagar.
4. Sonyabapu Ramdas Jadhav,
Age 55 years, Occu. Service,
Minor Irrigation Department,
Sinchan Bhawan, Nagar Aurangabad Road,
Ahmednagar, Dist. Ahmednagar.
5. Popat Baburao Kardile,
Age 59 years, Occu. Service,
Chief Accounts Officer,
Municipal Corporation, Ahmednagar
Dist. Ahmednagar. ... **Petitioners**

Versus

1. State of Maharashtra,
Through Kotwali Police Station,
Ahmednagar, Dist. Ahmednagar.

2. Suryabhan Shankarrao Pote,
Age 61 years, Occu. Agriculture,
R/o Baradari, Post Mehekari,
Tq. Dist. Ahmednagar.

... **Respondents**

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Mr. G.K.Thigale (Naik), Advocate for Petitioners
Mr. S.P.Deshmukh, APP for Respondent-State
Mr. K.D.Bade Patil, Advocate for Respondent No.2

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 15.06.2018

PRONOUNCED ON : 05.07.2018

JUDGMENT :-

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. In this proceeding styled as under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code (herein after referred to as 'Cr.P.C.') the petitioners who are the original accused from R.T.C. No.272 of 2010 pending in the Court of learned Chief Judicial Magistrate, Ahmednagar, are impugning the order passed by the learned Chief Judicial Magistrate on 04.09.2017 directing to issue process against them under Section 204 of the Cr.P.C.

for the offences punishable under Section 420 and 465 of the Indian Penal Code, on a complaint filed by Respondent No.2 herein.

3. Respondent No.2 filed a private complaint alleging that there is a trust of which he was a president on the date of lodging of the complaint. All the petitioners indulged in forgery and opened different accounts in the name of the trust in Union Bank of India, allowed the Government grants to be credited in those accounts and withdrew it without being authorized to function for on behalf of a trust when the trust already had its own account. Thus by deceiving the bank authorities they have opened the account and misappropriated the money.

4. The learned Chief Judicial Magistrate recorded a statement of Respondent No.2 under verification under Section 200 of the Cr.P.C. and by the impugned order held that there was substance to the extent of the allegations which constituted cheating and forgery and directed the process to be issued. He found that there

was substance to show that the petitioners were not the authorized trustees and still had managed to open the accounts in the name of the trust and allowed the grants to be entrusted to it and got those credited in these accounts. According to the learned advocate for the petitioners, there has been a serious dispute of a civil nature between the petitioners and Respondent No.2. It is going on before the Charity Commissioner's Office and it would all depend upon the rights which would be finally determined by the Charity Commissioner concerned. However without resorting to such civil remedy Respondent No.2 has been bent upon to harass the petitioners by lodging different complaints with police or in the criminal court. The foremost circumstances to which the learned advocate laid emphasis is that, this is a second attempt made by Respondent No.2 to file the complaint based on the same allegations, without disclosing the fact to the learned Chief Judicial Magistrate. He would submit that the very same allegations about opening of the accounts and allowing the funds to be credited in that

account and withdrawing those amounts were levelled by lodging a complaint in the year 2007. It was a Miscellaneous Criminal Application No.821 of 2007 wherein Respondent No.2 had arrayed the petitioner Nos.1, 3 and 5 which was filed on 26.11.2007. He would point out that the then Magistrate had directed investigation into that complaint under Section 156(3) of Cr.P.C. The police had submitted a negative report on 01.10.2008 and after going through it the complaint was dismissed on 29.04.2014. The learned advocate then submitted that a second attempt has been made by filing the present complaint which is in question now, simply by adding petitioner No.2, 4 and 6 and by keeping the allegations same. The learned advocate would then submit that though second complaint based on same facts is maintainable, as laid down in the case of **Poonam Chand Jain & Anr. Vs. Fazru ; [AIR 2005 SC 38]**, there has to be exceptional circumstances to entertain the second complaint. Respondent No.2 has neither brought this fact of filing of the earlier complaint to the notice of the learned Chief Judicial Magistrate nor

has the latter had any opportunity to examine this aspect of the matter. Thus the impugned order has been obtained by hiding material facts and for want of such exceptional circumstances, this being the second complaint, is not maintainable.

5. The learned APP requested to decide the Writ Petition on its own merits.

6. The learned advocate for Respondent No.2 submitted that there is no fault in issuing the process. The learned Chief Judicial Magistrate has appreciated the facts and circumstances and has by a reasoned order directed the process to be issued. The order is neither perverse nor arbitrary so as to enable this Court to invoke the writ jurisdiction and the Writ Petition may be dismissed.

7. At the outset it is necessary to note that Respondent No.2 has not filed any affidavit-in-reply to counter the averments in the petition. It is trite, as laid down in the case of Poonam Chand Jain (supra) that a second complaint, after the first is dismissed under

Section 203 of the Cr.P.C. is normally not maintainable and would be maintainable only in exceptional circumstances. After considering the earlier pronouncements and particularly by referring to the decisions in the case of **Bindeshwari Prasad Singh Vs. Kali Singh ; [1977 SCC (Cri.) 33]** and **Mahesh Chand Vs. B. Janardhan Reddy ; [AIR 2003 (1) SCC 734]**, it has been held that a second complaint on the same facts would be entertained only in exceptional circumstances where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd or unjust.

8. Right in the teeth of such a legal position, it was expected of the Respondent No.2 to have explained while lodging the second complaint as to how he was entitled to file a second complaint being an exceptional case falling in any of the afore mentioned categories. A bare perusal of the earlier complaint and the present one clearly shows that the facts alleged are clearly same, in

toto. If such was the state of affairs, the conduct of the Respondent No.2 in filing the second complaint without disclosing the fact of the filing of the first complaint muchless explaining the exceptional circumstances is a sheer abuse of the process of the law. It is also equally important to note that in Criminal Miscellaneous Application No.821 of 2007 which was the earlier complaint, the learned Magistrate had specifically concluded that the complainant that is the present Respondent No.2 had never turned up to the Court to dispute the negative report submitted by police under Section 156 (3) of the Cr.P.C. which was received on 01.10.2008 till the complaint dated 26.04.2010 was ultimately dismissed on 29.04.2014. Without turning up to Court in that case he apparently allowed the complaint to be disposed of and has filed this second complaint even before his earlier complaint was disposed of. The earlier complaint was disposed of by the order dated 29.04.2014 whereas he had filed this present complaint on 26.04.2010.

9. To sum up, the complaint filed by Respondent No.2 is in fact a second complaint on the same facts which fact was not disclosed to the learned Chief Judicial Magistrate and the impugned order of issuance of process was procured even without making out any exceptional circumstance which could have enabled the learned Chief Judicial Magistrate to comment upon. This being a sheer misuse of the process, the impugned order deserves to be quashed and set aside and the order directing process to be issued needs to be recalled.

10. The Writ Petition is allowed.

11. The rule is made absolute in terms of prayer clause 'B'.

(MANGESH S. PATIL, J.)

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vmk/-