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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5128 OF 2019**

Dalichand G. Shah

.. Petitioner

**Versus**

The State of Maharashtra and ors.

.. Respondents

- .....
- Mr.Prashant B. Pawar a/w Mr. Viraj Maniar, Mr. Sunda Kharde i/b AKS Legal Consultant, Advocates for Petitioner.
  - Mr. P.P. Chovhan i/b Ms. Komal Punjabi, for Respondent No.3-BMC.
  - BMC Officer- Mr. Vinay More, Executive Engineer, present.
  - PSI- Ms. Payal Pardeshi, EOW, Mumbai, present.
  - Mr. Sukanta Karmarkar, APP for Respondent-State.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : AUGUST 20, 2026**

**P.C.:**

**1.** Heard Mr.Pawar, learned Advocate for Petitioner, Mr. P.P. Chouhan, learned Advocate for the Respondent No.3 and Mr. Karmarkar, learned APP for Respondent-State.

**2.** On 13<sup>th</sup> August 2026, the following order was passed.

“1. Heard Mr. Badheka, Senior Advocate for the Petitioner, Mr. Konde-Deshmukh, learned APP for the Respondent No.1-State and Mr. Chavhan, learned Advocate for Respondent Nos. 2 and 3.

2. With the able assistance of the learned Advocate for the parties, I have perused the record in the present case. The Petitioner is charge-sheeted in connection with FIR No. 258 of 2015, registered with Azad Maidan Police Station, Mumbai, under Section 420 read with Section 120 B of the Indian Penal Code (IPC), and subsequently transferred to the Economic Offence Wing, General Cheating, Unit-I, whereupon it came to be registered being CR No. 79 of 2015. This Petition seeks quashing of the same.

3. Briefly stated, and as argued by Mr. Badheka, learned Senior Advocate appearing for the Petitioner, the Petitioner is one of the seven consultants against whom the present crime is registered on 19<sup>th</sup> September, 2015. The Petitioner subsequently being blacklisted vide order dated 19<sup>th</sup> January, 2016, and has undergone the consequences thereof until 2021 having been so black listed. Insofar as the criminality is concerned, case of the prosecution rests on the Petitioner having submitted certain bogus and fabricated vouchers and bills with regard to the de-silting work done and with regard to procurement of the material/vehicles for de-silting work. Most interestingly, the Petitioner, was not charge sheeted initially when first charge sheet was filed on 23<sup>rd</sup> November, 2017, but, in the supplementary charge sheet filed on 20<sup>th</sup> February, 2019, charge-sheeted for additional offences punishable under Sections 465 and 468 of the IPC are stated against the Petitioner.

4. The prosecution, and more specifically, the complainant, who is the Bombay Municipal Corporation have relied heavily on an audit report, a copy of which is appended to the Petition. The financial outlay and loss attributed to the Petitioner is approximately Rs. 44 lakhs, as stated therein. However, Mr. Badheka, has thrown light on an important aspect with regard to the case of the prosecution based on vicarious liability. He would submit that the complainant (BMC) was fully aware about the appointment of a sub-contractor with whom the BMC had interacted and dealt with while accepting the work done as against the bills which were submitted. He would submit that the private complainant, therefore, cannot plead to not having any privity of contract with the sub-contractor, especially in view of the fact that the sub-contractor and the Petitioner were in a joint venture, for being appointed as consultants for the work of de-silting according to the tender conditions. He would submit that even according to the BMC, if their financial loss is to the extent of Rs.44 lakhs, the Petitioner need be put to appropriate terms to deposit the said money, since what is observed in the present case is that civil liability is attempted to be converted into criminality thereby virtually ousting the Petitioner out of the ecosystem forever.

5. The submission made by Mr. Badheka, prima facie, appears to Court to have merits. Considering that though the FIR is registered on 19<sup>th</sup> September, 2015, under Section 420 of the IPC, the BMC has added the charges of forgery and fabrication under Section 465 and 468 on 20<sup>th</sup> February, 2019, which itself goes to show the laxity on the part of the Corporation. Insofar as the issue of vicarious liability is concerned, that would undoubtedly be a civil cause of action, if at all the BMC has to raise the same. However, since the BMC was fully aware of the sub-contractor," the BMC cannot treat non-privity of contract with the sub-contractor, as criminality. Considering that the Petitioner has already undergone the indignity of being blacklisted, and being kept out of the system for more than five years, the

Petitioner's case deserves to be considered as he has been penalised from more than he deserved.

6. Mr. Chavhan, learned Advocate enters appearance for the BMC. He would submit that he will take appropriate instructions on the submissions which are made by Mr. Badheka, and accordingly apprise the Court on the adjourned date. Subject to hearing the BMC, appropriate orders will be passed to dispose of the present Petition on the next date in accordance with law.

7. Mr. Chavhan, will take appropriate instructions and accordingly apprise the Court so as to enable the Court to determine the present Writ Petition.

8. Ad-interim relief granted earlier shall continue to operate till the next date.

9. List the matter on 20<sup>th</sup> August, 2026.”

**3.** Today when the matter has been listed, Mr. Chavhan learned Advocate appearing for the Mumbai Municipal Corporation submits that the Court may pass appropriate orders in accordance with law. The issue as also the submissions on merits have already been delineated hereinabove in the above order. Further reiteration of the same is not required. The Petition is filed for quashing of the FIR. The Petitioner had also suffered the ignominy of being blacklisted and suffered the consequences thereof. Insofar as the complaint raised by the Corporation is concerned, it is with regard to certain unfinished work, *inter alia*, qua the sub-contractor and it is the case of the prosecution that the Corporation has suffered financial loss of almost Rs. 44 lakhs. Though it would be otherwise in the fitness of thing to direct the Petitioner to deposit Rs. 44 lakhs either with the Corporation or with the Court and quash the present proceedings, in

my opinion, passing such an order would be in the nature of double jeopardy to be effected upon the Petitioner who has already suffered the consequences of the blacklisting and has remained out of the ecosystem for the past more than 7 years. Equally, considering the fact that if there is a dispute about the running bills which are submitted by the sub-contractor, who was accepted by the Corporation and with whom the Corporation had a relationship with regard to the de-silting contract undertaken by the Petitioner, the Petitioner cannot be held responsible. In the case of a tender of such a nature, joint venture is preferred by the Corporation itself for the purpose of qualifying for the technical as well as the financial bids. In that view of the matter, if the Corporation feels that they have incurred any loss to the extent of Rs. 44 lakhs as opined and stated in the complaint which has been filed, it is the lookout of the Corporation to deal with the same in accordance with law by approaching the appropriate Civil Court/forum and/or even arbitration proceedings for that matter in accordance with the terms and conditions of the works contract and in accordance with law. That not having been done, filing a criminal complaint in the manner and nature in which it has been filed in the present case, is not sustainable. Notwithstanding the fact that a without prejudice offer was also discussed with the Petitioner across the bar on the previous occasion in the presence of counsel for the Corporation that if the Petitioner shows his bonafides by taking instructions to deposit the

amount of Rs. 44 lakhs, the criminal complaint can be quashed. However, Corporation Counsel is unable to concede at all. Hence, in view of my aforesaid observations and findings as also the findings returned in the previous order, I am not inclined to put the Petitioner to any further financial loss. It is *prima facie* and clearly seen by the Court that a civil liability is attempted to be converted into criminality by the Municipal Corporation is the present case. The dispute with regard to non-performance of the work under the works contract awarded to the Petitioner is to be dealt with in terms of the conditions of the contract itself rather than to invoke criminality in the present case. The invocation of criminality in the present case is also qua the bills rather running bills raised by the sub-contractor with regard to the work plan. Such a matter can never be determined in the criminal Court as no element of cheating is seen since substantial work has been done and accepted by the Corporation.

**4.** In that view of the matter and in view of the aforesaid reasons, the criminal Petition deserves to be allowed. The issue of vicarious liability is well documented and well settled and is no longer *res integra*. Whenever vicarious liability is required to be applied and recoveries are required to be made under works contract, the correct course of action is to approach the civil courts as also as per the agreement before the Tribunal if there is any arbitration clause. Invocation of criminal liability in order to settle scores and effect

recoveries in this fashion is something which is required to be frowned upon by the Courts and therefore this order is passed.

**5.** The criminal Writ Petition is therefore allowed in terms of prayer clause (a) which reads thus:

“a) be pleased to quash and set aside Charge-sheet bearing CC. No. 190/PW/2019 dated 20.02.2019 pending before the Ld. Addl. Chief Metropolitan Magistrate, 47<sup>th</sup> Court, Esplanade - Mumbai and CR. No. 79 of 2015 (FIR No. 258 of 2015) registered by the Economic Offence Wing, General Cheating, Unit-I, Mumbai under section 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, qua the Petitioner;”

**6.** Learned Advocate for the Petitioner informs that after filing of the charge-sheet which is stated in the Petition, the prosecution has filed the supplementary charge-sheet and the entire offence is now merged into charge-sheet no. 825/PW/2017 qua M/s. Naresh Traders of which the Petitioner – Dalichand G. Shah is the proprietor. In that view of the matter, the charge-sheet no. 825/PW/2017 is also directed to quashed and set aside.

**7.** The Petition is allowed and disposed of in the above terms.

[ MILIND N. JADHAV, J. ]