

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

CRIMINAL APPLICATION NO.3039 OF 2015

Babasaheb s/o Kisan Suryawanshi ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Shri N.B. Khandare, Advocate holding for
Shri M.P. Tripathi, Advocate for applicant
Shri M.M. Nerlikar, A.P.P. for State
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CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 29th June, 2015.

ORAL ORDER :

1. Heard counsel for the applicant. He invited our attention to the allegations in the F.I.R. and submits that, even if the allegations are taken on its face value and read in its entirety, no offence is disclosed against the applicant. It is submitted that, at the relevant time, the applicant was authorised to give advance amount for the construction of toilets. It is submitted that, the Government Resolution dated 8.6.2010

and also the Government Resolution dated 13.10.2011 issued by the Planning Department, Government of Maharashtra authorises the Block Development Officer to give such advance amount for construction of toilets. It is submitted that, the complainant prepared the report hurriedly within two days, contrary to earlier detailed report submitted by the Block Development Officer, Panchayat Samiti, Shirur Kasar to the Chief Executive Officer, Zilla Parishad, Latur. It is submitted that, upon perusal of the allegations in the F.I.R., what is alleged against the applicant is that, while disbursing the amount mentioned in the F.I.R., he did not follow the guidelines issued by the Government of Maharashtra. It is submitted that, the Department has already initiated departmental enquiry and the applicant is placed under suspension and therefore, there is already departmental enquiry initiated, there is no reason to entertain the criminal complaint against the applicant. It is submitted that, all the acts done by the applicant are in accordance with guidelines issued by the State Government and Government Resolutions placed on record along with the application. Therefore, the counsel for applicant submits that, the F.I.R. deserves to be quashed.

2. On the other hand, learned A.P.P., relying upon the investigation papers, submits that, the applicant and the other

co-accused conspired with each other and shown to have disbursed the amount for construction of toilets, though in fact no such construction of toilets was done. It is submitted that, huge advance amount is disbursed without verifying the record, which is not permissible. It is submitted that, the allegations in the F.I.R. and the material collected by the prosecution agency unequivocally indicate involvement of the applicant and, therefore, this Court may not interfere in the investigation.

3. We have given careful consideration to the submissions advanced by the learned counsel for the applicant and learned A.P.P. for the State. With their able assistance, we have perused the averments made in the application and the annexures thereof and in particular the contents of the F.I.R. in the light of investigation papers made available for our perusal. Upon perusal of the allegations in the F.I.R., prima facie it appears that, without taking into consideration the earlier record of the concerned Grampanchayat, advance amount was disbursed for construction of toilets. It further appears that, one of the Gramsevak who is named in the F.I.R. has misappropriated the huge amount to the tune of more than Rs.39,00,000/-. The further allegation is that, the applicant and the other co-accused conspired with each other and

misappropriated the amount meant for various schemes. One of the allegations is that, the amount which is ear-marked for another scheme, was also diverted by the applicant for the construction of toilets.

Even if the contentions of the counsel for the applicant is accepted that the applicant was authorised to advance 25% amount, in that case also, from the material placed on record, it is clear that, unless the concerned Grampanchayat has accounted the earlier amount which is given for the purpose of construction of toilets, the officer is not authorised to release further amount.

4. Upon perusal of the investigation papers, prima facie it appears that, the applicant has not taken into account the earlier record of the concerned Grampanchayat and proceeded to disburse the amount. It is not necessary for us to elaborate further on the allegations made in the F.I.R. at the stage of quashing the F.I.R., suffice it to say that, upon perusal of the allegations in the F.I.R., offences are disclosed which needs to be investigated. When there are allegations of conspiracy, it is always the matter for investigation and this Court, while exercising jurisdiction under Section 482 of the

Criminal Procedure Code, cannot reach to the final conclusion that those allegations, on the face of it, are not sustainable and accede to the prayer of the applicant for quashing the F.I.R.

5. For the aforesaid reasons, the criminal application sans merits, hence rejected.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)

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