

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

Criminal Writ Petition No.894 of 2014

* Somnath Bhau Shete,
Age 53 years,
Occupation Service as
Chief Officer,
R/o Municipal Quarters,
Behind Court Building,
Amalner, Taluka Amalner
District Jalgaon. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Investigating Officer,
Bazar Peth Police Station,
Bhusawal, Taluka Bhusawal,
District Jalgaon.
- 2) Bhusawal Municipal Pensioners
Association, Through its
Chairman
Suresh s/o Laxman Patil,
Age 72 years,
Occupation : Pensioner,
R/o 9, Nirmal, Shantinagar,
Back side of Saint Alysia
School, Bhusawal,
Taluka Bhusawal, District Jalgaon. **.. Respondents.**

Shri. Anand V. Patil (Indrale), Advocate, for petitioner.
Shri. Additional Public Prosecutor, for respondent No.1.
Shri. Rajendra Deshmukh, Advocate, for respondent No.2.

**CORAM: T.V. NALAWADE
Smt. I.K. JAIN, JJ.**

DATE : 17th APRIL 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both sides for final disposal by consent.

2) The present proceeding is filed for relief of quashing and setting aside the proceeding of R.C.C. No.112/2014 to the extent of the present petitioner. The proceeding was pending in the Court of the Judicial Magistrate, First Class, Bhusawal. On the basis of order made by the Judicial Magistrate under section 156 (3) of the Code of Criminal Procedure in R.C.C. No.112/2014, Crime No.158/2014 is registered in Bazar Peth Police Station, Bhusawal.

3) The private complaint was filed by respondent No.2 against the present petitioner and others. The petitioner was the Chief Officer of Municipal Council, Bhusawal. There is allegation that the Municipal Council had passed resolution for getting some work of construction of road and repairs of road done through contractor and accordingly tender notice was issued. It is contended that there was illegality in this process right

from the beginning and the price of each work was not got fixed from nodal agency, Maharashtra Jeevan Pradhikaran and the value of the work quoted in the tender notice was much higher than the real value. It is contended that even after getting fixed the value of the work through nodal agency, there was no possibility of increase in the value by more than 10% in a special case and so the concerned have committed offence. It is contended that by using this *modus operandi*, more value was shown for the work and the amount has been misappropriated. The crime is registered for offences punishable under sections 409, 405, 406, 467, 471, 120-B etc. of the Indian Penal Code. It is against the Councilors and some employees of the Municipal Council. Allegations are made that at the relevant time the present petitioner was the Chief Officer and so he had played role in the aforesaid illegal activity.

4) There is no need to go into the merits of the aforesaid allegations as the submissions made show that the present petitioner was working in this Municipal Council between the period 16-10-2008 and 31-1-2011. The record shows that the resolution was made

subsequent to the handing over of the charge by the petitioner and the tender notice was published on 4-9-2013. Thus he was not involved in the process of passing of the resolution, preparation of proposal, issuance of the tender and even the allotment of the work. The record shows that the proposals were prepared in August 2012. Thus, even at the time of consideration of starting of the work, he was not there.

5) In view of the aforesaid circumstances this Court holds that it will be abuse of process of law and it will be unnecessary harassment to the petitioner if the charge sheet is allowed to be filed against him.

6) In the result, the petition is allowed. As against the petitioner the aforesaid proceeding and the First Information Report stand quashed and set aside. Rule is made absolute in these terms.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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