

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

Criminal Writ Petition No.784 of 2014

Umesh S/o Kalidas Nemade. .. **Petitioner.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. P.G. Patil, Advocate, holding for Shri. R.L. Kute,
Advocate, for petitioner.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
respondent Nos.1 and 2.

Shri. A.P. Bhandari, Advocate, for respondent No.10.

Shri. R.S. Deshmukh, Advocate, for respondent No.11.

With

Criminal Application No.6154 of 2014

Mahesh S/o Basru Falak. .. **Applicant.**

Versus

The State of Maharashtra
And Another. .. **Respondents.**

Shri. J.M. Murkute, Advocate, for applicant.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent No.1.

Shri. Rajendraraa Deshmukkh and Shri. P.B. Gamot, Advocate, for respondent No.2.

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

DATE : 17th APRIL 2015

ORDER:

1) The first proceeding is filed by the President of the Municipal Council Bhusawal and the second proceeding is filed by the Proprietor of Siddhvedh Infotech Computer Training Institute, Bhusawal for quashing of the proceeding of RCC No.236/2014 and the FIR registered on the basis of order made in this proceeding under section 156(3) of the Code of Criminal Procedure by the Judicial Magistrate, First Class. Both the sides are heard.

2) The petitioner from the first proceeding was President of Municipal Council Bhusawal for the period from 26-12-2011 to 9-7-2014. Respondent No.2, original complainant, had filed a private complaint. He has made

allegation that during the tenure of present petitioner resolution was made in the Municipal Council on 11-10-2013 and as per this resolution one work of a project was given to Siddhvedh Infotech, one of the accused. It is contended that no procedure was followed for arriving at the value of the work, no procedure was followed for publishing the tender and false record was prepared for getting amount of Rs.9 lakh of the Municipal Council. It is contended that only due to the precaution taken by the in-charge Chief Officer, Shri. Sonwane, the bill of Rs. nine lakh was not passed otherwise the petitioner and his associates, would have been able to misappropriate the amount of Rs. nine lakh.

3) The record produced shows that tender notice was published in newspaper "Dainik Avhan" on 22-6-2013 and tenders were invited for giving training to persons (both male and female) above the age of 14 years who were from economically backward class in profession and in technical wing. The institutions which were involved in this training were expected to fill the tenders. Name of the project was "English Speaking and Personality

Development Course". From the tender notice it can be said that material information was withheld. The number of the beneficiaries was not mentioned, period of the training course was not mentioned and even the amount per head which could have been made available was not mentioned. In spite of this circumstance, there is record to show that three tenders were received and in the tenders the the number of the beneficiaries was filled and each had quoted the amount which was between Rs.5000/- and Rs.5300/-. Siddhvedh Infotech which was involved in computer training quoted lowest rate, the rate of Rs.5000/-. It can be said that none of the three institutions had informed that they were involved in the training for personalty development or English Speaking. The tender of Siddhvedh Infotech was accepted on 11-10-2013 and direction was given to start the training on 23-10-2013.

4) A copy of the agreement written on non judicial stamp is produced and it shows that this stamp was sold by the treasury on 12-11-2013. The agreement was shown to be executed but no date was mentioned and the space of the date was kept blank.

5) There is no record to show that the Municipal Council had prepared list of beneficiaries. During the course of arguments, learned counsel for the petitioner produced one list of so called beneficiaries but there is no record to show that it was prepared by the Municipal Council. There is no record to show that the training was actually started. In spite of these circumstances, bill was prepared for Siddhvedh Infotech. It is necessary to mention that there are no dates on most of the record in respect of the present project. It was submitted that the training was started on 1st November 2013 and it was completed on 1st February 2014.

6) There is voucher submitted and the is record of bill prepared by Bhusawal Municipal Council. On this record there is no bill number, there is no voucher number, there is no date. The bill was for Rs. 9 lakh and it was signed by the Accountant and the President of the Municipal Council. The in charge Chief Officer raised as many as five objection to the bill as under :-

(i) There is no record to show that the training was imparted to the persons above 14 years as per the requirement of the project.

(ii) There was no record of the place where the training was imparted as training was to be given to 200 persons and so the place and the programme ought to have been submitted.

(iii) There was no record to show that such beneficiaries were collected from some school etc. as per the requirement of the project. There was no record with regard to the procedure which was followed for giving of the training.

(iv) There was objection as the procedure for calling the tender was not properly followed.

(v) There was no record of the persons who had allegedly given the training as it was necessary to inform that those persons had experience of training or there were trained teachers in respect of the subject of the project.

7) Due to the aforesaid objection and absence of the record the bill was not passed. The learned counsel for the petitioner submitted that as the bill is not passed, no crime could have been registered and the petitioner is

entitled to get the relief of quashing of the proceeding. This submission is not at all acceptable. It is a case of creation of false record and attempt is made to deceive the Municipal Council by hatching conspiracy and the persons like the President of the Municipal Council are involved in such incident. It cannot be said that it will be abuse of process of law if the investigation is made and the President and the other applicant are required to face the prosecution. So, for the same reasons, this Court holds that no relief can be granted in favour of the applicant from the second proceeding. Apparently he had joined hands with the persons from the Municipal Council and he created some false record for enabling himself and others to misappropriate the amount of the Municipal Council. Thus, the second proceeding is also liable to be dismissed.

8) In the result, both the proceedings stand dismissed.

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

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

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