

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

Criminal Application [ABA] No.428 of 2014

(Arun Tryambakrao Gawande vs. State of Maharashtra, through P.S.O. Daryapur, Dist. Amravati)

with

Criminal Application [ABA] No.427 of 2014

(Ishwardas Natthuji Vaidya vs. State of Maharashtra, through P.S.O. Daryapur, Dist. Amravati)

with

Criminal Application [ABA] No.429 of 2014

(Balwant Baswant Wankhade vs. State of Maharashtra, through P.S.O. Daryapur, Dist. Amravati)

with

Criminal Application [ABA] No.431 of 2014

(Ramdas Rahuji Gade vs. State of Maharashtra, through P.S.O. Daryapur, Dist. Amravati)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. D.T. Shinde, Advocate for the Applicant in B.A. No.428/2014
 Mr. V.A. Kothale, Advocate for the Applicant in B.A. No.427/2014
 Mr. S.A. Bramhe, Advocate for the Applicant in B.A. No.429/2014
 Mr. P.R. Agrawal, Advocate for the Applicant in B.A. No.431/2014
 Mr. R.S. Nayak, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 02, 2015.

By this bunch of applications, the applicants are before this Court apprehending their arrest in connection with Crime No153/2014, registered at Daryapur Police Station, District Amravati for the offences punishable under Sections 467, 468, 471, 406, 420, 109 read with Section 120-B of the Indian Penal Code.

The applicants namely Arun Gawande and Balwant Wankhade in Criminal Application Nos.428 and 429 of 2014 respectively were the office bearers of the Agriculture Produce Market Committee Daryapur, District Amravati (hereinafter

referred to as 'the Committee' for the sake of brevity) and holding the position of of the Chairman of the Committee for the relevant period. Ishwardas Vaidya, the applicant in Criminal Application No.427/2014 is a person, who is a sub-contractor and carried out certain works allotted to him through the main agency viz. M/s. Khare and Tarkunde, to whom the work was allotted. Applicant-Ramdas Gade is the person, who was Secretary of the Committee for the period from 1994 to 2009. It is not in dispute that applicant-Ramdas Gade stood retired in the year 2009.

The perusal of the report lodged at the instance of Sahebrao Bhade shows that under the scheme floated by the Central Government viz. "Technology Mission On Cotton" (hereinafter referred to as 'the TMC' for short). The Central Government, being a sponsoring agency for the TMC Scheme, allotted certain funds. It is not in dispute that the work, which was to be undertaken in the TMC, was in relation to construction of certain internal roads, platforms, pavements etc.. Needless to state that the beneficiaries of this scheme were the residents of the town, and the Committee could have been said to be a nodal agency, through which the TMC was effected. Under the TMC scheme, construction cost of Rs.210.08 lacs was approved by the Marketing Director. The work was allotted to M/s. Khare and Tarkunde firm. In the audit report, there was

revelment of certain facts. It will be necessary to refer to this revelation.

Under the project, an area was approved to the extent of 5540 sq.mtrs., whereas the tender was floated for an area of 8240 sq.mtrs., and in actual, the work was for only to the area of 4394 sq.mtrs. The prescribed rate was Rs.1,107/- per sq.mtrs. The bill was drawn at the rate of Rs.2,342/- per sq.mtrs. The approved area was to the extent of 2151 sq.mtrs. The tender was floated for the area to the extent of 1107 sq.mtrs. only, whereas the disbursement of the amount of the bill paid for the works was to the area extending to 2342 sq.mtrs. Similarly, insofar as the approved work of TRC building, the rate approved was Rs.5000 per sq.mtrs. and the disbursement was at the rate of Rs.6,914/- per sq.mtrs. Likewise for construction of roads, approved rate was Rs.2,300/- per sq.mtrs and the disbursement was at the rate of Rs.3,596/- per sq.mtrs. For leveling of this site, the area approved was 20400 sq.mtrs. and the rate was Rs.73.50 sq.mtrs. whereas the amount disbursement was at the rate of Rs.93/- per sq.mtrs. The further revelment was in respect of rate area extending to 360 sq.mtrs. and approved rate was Rs.2,000/- per sq.mtrs., whereas disbursement was at the rate of Rs.3672/- per sq.mtrs. There was an additional feature in this work. This road was shown to be constructed twice and the disbursement of the amount

towards this road was for two occasions. It did not stop here. The further revealment was, the work for which disbursement of the amount was in excess, was the work of a sub-standard quality. Accordingly, an enquiry was conducted. The Department of Co-operation finding this being a very serious matter, necessary directions were issued to take steps for initiations of criminal action. Accordingly, a report was lodged.

Learned Counsel Mr. Bramhe appearing with Mr. Shinde firstly made an attempt to submit that assuming, though not admitting, there are certain deficiencies found in the inspection of the work, the same would be at the most an irregularity. The submission of the learned Counsel was, the work was inspected, verified and approved at various stages and various levels. The learned Counsel further made an attempt to submit that in response to an earlier communication, a detailed reply was submitted for the said work. It is also submitted by the learned Counsel that the Director of Marketing himself approved the revised plan.

Mr. Shinde, the learned Counsel for the applicant submitted in addition to the submissions of Mr. Brahme that the applicants are not only the parties to the resolution passed on various occasions, but other members of the Committee were also party to the various resolutions passed by the Committee in respect of this work and the approvals received from the

superior officers of the Co-operative Department. Mr. Shinde made a bold submission that as the applicants are in active political life, there are certain people, who are having a contrary interest in the politics to the applicants and with a designed object were successful in lodging a false case against those applicants.

Insofar as applicant- Ishwardas Vaidya is concerned, Mr. Kothale, the learned Counsel for the applicant, submitted that the applicant is having no direct concern either with the affairs of the Committee or with the affairs of M/s. Khare and Tarkunde Construction firm. Mr. Kothale submitted that the work was allotted to M/s. Khare and Tarkunde firm and the applicant was hardly a sub-contractor to see the work allotted by the firm M/s. Khare and Tarkunde. He submits that there is no release of amount towards any work directly to the applicant. Mr. Kothale invited my attention to the documents placed on record in Criminal Application No.427/2014, namely the communication of release of amount of subsidy, completion certificate issued by the Director of Marketing etc. He submitted that the completion certificate was issued and signed not only by the representative of the firm but it is also signed by the Director of Marketing. Mr. Kothale submits that there is no material against the applicant to connect the applicant with the commission of the misdeeds either in rates/prices or

modification of the area or receiving any amount directly from the Committee or from the sponsoring agency of the Central Government. Mr. Kothale further submits that the applicant was protected by an interim order of this Court and he is ready to cooperate the investigating agency. He also submits that even assuming the material as it is, though not admitting the same, there is no requirement of the custodial interrogation of the applicant.

Mr. Agrawal, the learned Counsel for the applicant-Ramdas Gade, the Secretary, submits that even in the F.I.R. lodged, there is no reference of the applicant. He submits that the applicant enters on the scene only at the stage of opposing the application, wherein the say was filed by the investigating agency. He submits that the only allegation against the applicant is, he was a signatory of the cheques issued in the alleged period of misdeeds. He further submits that the applicant, who was Secretary from the year 1994 to 2009, had a clean and unblemished record at his credit in his service career. He submits that, being the Secretary, it was the part of the duty to sign the cheques jointly. The applicant had no role to play either in issuance or floating of tender notice, the approval of revise plan and accepting the funds or disbursement of funds directly either to individual or to any firm. He submits that the applicant is at the advanced age of 65 years and leading his

retired life and possessing no official record with him. As the applicant stood retired in the year 2009, and having the firm roots in the society, there cannot be any apprehension that the applicant would cause any hindrance in the investigation or would flee away from the investigating agency, is the submission of the learned Counsel Mr. Agrawal. Mr. Agrawal further submits that the applicant is protected by an interim order of this Court and was and is ready to extend his cooperation with the investigating agency.

Considering the submissions of the learned Counsel Mr. Brahme and Mr. Shinde, what reveals from the record is, firstly the audit report, which refers to the construction activities from the year 2006 to 2009 under the TMC project. The summary shows that the approved project cost was Rs.159.35 lacs; the Central Government provided the financial aid of Rs. 90.00 lacs to the work, which was to be completed by 31/05/2007; extension was sought for, work completed in the year 2008; the approved estimated cost of Rs.210.08 lacs; the actual costs disbursed for the project was Rs.275.93 lacs. Then, there are the details of the work undertaken in the TMC project, namely Pucca Road b.t., Pucca Road c.c., Pucca Platform, Concrete Platform paving, Fire fighting arrangement, Grading Lab, Covered Shed, Levelling site, etc. The objections more particularly were serious of the road construction. It will be

interesting to note that in the road area, there was approximately 32.20 sq.mtrs. drain. Twicely work was shown to be done on this road, when the area was including a drain/nallah. It was expected to deduct that area from construction. However, interestingly, there is a rise in the work. The area was shown to the extent of 621 sq.ft. and there is no explanation, how the area, instead of deducting it, was increased. Similar is the case of other works.

Though the submission was made on behalf of the applicants that various resolutions were passed and the other members of the Committee were parties to those resolutions, what reveals is a serious objection raised by the members of the Committee. It is again interesting to note that the report shows on the occasion of such resolutions, the majority members were absent. So what reveals is either the resolutions were passed in minority or the resolutions were passed even though there were serious objections raised by the members of the Committee. It will not be out of place to mention that some of the members raising serious objections to the quality of the construction work and cost-wise difference in the disbursement of the amount raised this issue before the Chairman of the Committee. Thus, the submission of the learned Counsel to the effect that as if, all the Committee Member were parties to the resolutions of either rise in the area or the costs and only these two applicants are

made scapegoat, is not the fact which reflects from the perusal of the material. It was also an attempt of the learned Counsel to submit that the necessary approval was sought from the Director of Marketing. The learned Counsel for the applicants placed heavy reliance on the communication dated 03/03/2007. The perusal of this communication only refers to seeking an approval of modification in the area. In spite of repeated queries made by this Court, the learned Counsel for the applicants were unable to show any material in respect of approval by the Director of Marketing for the revised rates of disbursement of the amount. The learned Counsel also made an attempt to submit that a satisfactory reply was submitted to the objections raised in the audit. For this purpose, a reliance was placed on the documents placed on record at Annexure-C. The perusal of this explanation would hardly be of any help to the applicants. It mostly deals with modification of area and revised rates. There is no material with such revised rates were approved by either Director of Marketing or not of the authority i.e. sponsoring agency and as such this communication is hardly of any help to the applicants.

The investigation is at preliminary stage. There are certain aspects for which the investigating agency will have to exert more to unearth the various links as the applicants were the office bearers of the Committee. It is not the case of a solitary work, but it involved various work conducted under the

scheme of Central Government. The scheme though completed, it was with rise in expenditure and cost, and ultimately a sub-standard quality work, all these aspects would need deep probe and for such probe the custodial interrogation of these applicants would be necessary.

Considering this aspect, the applications of the applicants, namely Arun Gawande and Balwant Wankhade, are meritless and the same are rejected. Needless to state that the interim protection granted to these applicants stands vacated.

Insofar as the applicant-Ishwardas Vaidya and applicant-Ramdas Gade are concerned, on perusal of the material placed on record, I find considerable merit in the submissions of the learned Counsel Mr. Kothale and Mr. Agrawal respectively that the applicant in Criminal Application No. 431/2014 stood retired in the year 2009 and he is in his advance age. It is not even the case of the investigating agency that he possesses of any material, official document etc. In the allegation against this applicant is, he was a joint signatory at the relevant time. The apprehension of the State can be taken care of by imposing certain conditions on him.

Similar is the case of the applicant-Ishwardas Vaidya. The investigating agency admits that the applicant was the sub-contractor and the main contract was issued in favour of M/s. Khare and Tarkunde Company. The reply filed by the State

shows that the role attributed to the applicant-Ishwardas is of a Power of Attorney holder. The audit report and other allied material fail to refer any specific role of the applicant-Ishwardas or any amount directly disbursed to him or his approach either to the Committee directly or any fund released to him directly. Thus, the custodial interrogation of the applicant-Ishwardas would also not be necessary. The apprehension in respect of this applicant can also be taken care of by imposing the conditions on him.

In the result, the applications of applicant Arun Gawande and Balwant Wankhade are rejected and the applications of Ishwardas Vaidya and Ramdas Gade are allowed.

The interim protection granted to the applicants namely Ishwardas and Ramdas, by order of this Court dated 19/08/2014 and 22/08/2014 respectively are confirmed with conditions that the applicants to attend Daryapur Police Station, District Amravati on every second and fourth Sunday between 09:00 a.m. to 12:00 p.m. and maintain a dairy of their attendance duly countersigned by the Police Station Officer till filing of the Charge-sheet.

The learned Counsel appearing for the applicant-Arun Gawande and applicant-Balwant Wankhade jointly pray for extension of the protection granted by this Court.

The learned A.P.P. opposes the prayer for extension.

Considering the fact that the applicants were protected by this Court by order dated 22/08/2014, the prayer for extension is allowed. The interim protection granted by this Court will be in force for a period of two weeks only. Needless to say that such extension shall stand vacated on expiry of period of two weeks.

The applications are disposed of as such.

JUDGE

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