IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4808 OF 2016

Shaikh Yunus s/o.
Shaikh Chand Patel,
Age : 43 years, Occ.Business,
r/o. Tapadiya Complex,
Alishan Nagar, Beed Bye-Pass,
Aurangabad ..Petitioner

Vs.

1. The State of Maharashtra,
   Through the Police Inspector,
   Shevgaon Police Station,
   Dist. Ahmednagar

2. Appasaheb s/o. Gangadhar Shinde,
   Age : 40 years, Occ. Service as
   Circle Officer, Bhatkudgaon,
   Tq. Shevgaon, Dist. Ahmednagar,
   r/o. Lande Vasti Road, Shevgaon,
   Tq. Shevgaon, Dist.Ahmednagar ..Respondents

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Mr.S.S.Tope, Advocate for applicant

Mr.K.S.Patil, A.P.P. for respondent no.1

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CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : SEPTEMBER 14, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J) :

The applicant (original accused no.1) has prayed for quashing of the First Information

Report bearing No.15 of 2016 (“F.I.R.”, for short) registered in Police Station, Shevgaon, Tq. Shevgaon, Dist. Ahmednagar against him and others for the offences punishable under Sections 353 and 379 read with Section 34 of the Indian Penal Code (“I.P.C.” for short) and under Section 3 punishable under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (“the Act of 1957”, for short).

2. Respondent no.2 viz:- Appasaheb Gangadhar Shinde, the Circle Officer, appointed at village Bhatkudgaon, Tq. Shevgaon, Dist. Ahmednagar and his companions raided on 15.01.2016 at about 11.15 p.m. at a spot in the Godavari river bed within the local limits of village Mungi, near the agricultural land of one Gulabrao Daspute and found eight trucks, in which the sand that was illegally excavated from the river bed by means of a poke-lane machine and was being loaded in the

said trucks. After noticing the raiding party and police, two of the trucks were speedily taken away by the respective drivers. The remaining six trucks came to be seized on the spot. The operator of the poke-lane machine removed the said machine from the riverbed, took it to the land of Gulabrao Daspute and locked it there. The owner and operator of the poke-lane machine extended threats to the informant and others, obstructed them in discharging of their official duties and fled away. The sand worth Rs.22,95,000/-, which was illegally excavated, came to be seized. The six trucks as well as the poke-lane machine also were seized. The poke-lane machine was owned by the present applicant. Respondent no.2 lodged F.I.R. in the Police Station, Shevgaon against the applicant and others, on the basis of which the above-numbered crime came to be registered against them for the above-mentioned offences.

3. The learned Counsel for the applicant submits that the applicant personally was not present at the spot where the sand was being excavated and loaded in the trucks. It is stated that one of the agriculturists having surname, Jadhav, had requested the applicant to use his poke-lane machine for levelling his land. The applicant did not use that machine for illegally excavating the sand. In fact, the applicant had filed Regular Civil Suit No.361 of 2011 against the Government and the Tahsildar, Shevgaon, which came to be decreed and the Government was directed to allow the applicant to excavate the sand and due to that, the Revenue Officer had bias against the applicant. It is further stated that on being complained by the applicant, the P.S.I. - Satish Mane of Police Station, Shevgaon was caught red-handed by the Anti Corruption Bureau while accepting bribe and therefore, the police also had grudge against the applicant. Therefore, the

applicant has been falsely involved in this crime. It is stated that the agriculturists themselves have excavated the sand. The sand was not being transported. Since the applicant was not present at the spot of the incident, there is no question of connecting him with the offence punishable under Section 353 of I.P.C. On these counts, it is prayed that the above-numbered F.I.R. registered against the applicant may be quashed and set aside.

4. As against this, the learned APP submits that the applicant is the brain behind the alleged crime of illegal excavation of the sand through his own poke-lane machine. Providing machine for illegal excavation of sand which was being stealthily and illegally transported, itself would constitute an offence of committing theft of sand. As such, prima facie the offence punishable under Section 379 of Indian Penal Code is disclosed

against the applicant. He further submits that committing theft of sand and illegal excavation thereof, also would invite the offence under Section 3 punishable under Section 15 of the Act of 1957. He submits that the relief of pre-arrest bail asked for by the applicant was refused by the Sessions Court. The applicant had filed Criminal Application No.377 of 2016 before this Court for pre-arrest bail, but it came to be dismissed as withdrawn by the applicant. He submits that there are sufficient grounds to carry out further investigation into the above-numbered crime registered against the applicant and others. He, therefore, prays that the application may be rejected.

5. The applicant and his companions have been connected with the offences punishable under Sections 353 and 379 read with Section 34 of the I.P.C. Even if it is accepted for a while that

the applicant was not present at the spot for obstructing the informant and others when they were discharging their duties, providing the poke-lane machine for illegal excavation of the sand for illegal transportation from the Godavari river bed, prima facie, would show that the theft of the sand was being committed by the companions of the applicant in furtherance of their common intention with the applicant. As such, the facts narrated in the F.I.R., prima facie, disclose the offence punishable under Section 379 read with Section 34 of the I.P.C. against the applicant as also the offence under Section 3 punishable under Section 15 of the Act of 1957.

6. So far as the offence punishable under Section 353 of the I.P.C. is concerned, it would be a matter of further investigation, which would indicate, whether that act was done by the companions of the applicant in furtherance of their common intention with the applicant.

7. The facts disclosed from the F.I.R. warrant further investigation to dig out the truth. In the circumstances, we are not inclined to stop further investigation by quashing the F.I.R. Hence, the order :-

Criminal Application is rejected.

[SANGITRAO S. PATIL, J.] **[S.S. SHINDE, J.]**

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