

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

**CRIMINAL APPLICATION NO. 5415 OF 2016**

Kalpna D/o Dhana Kachre (after  
marriage Kalpna W/o Girish Chrate),  
Age – 34 years, Occu.: Service as  
Gramsevak, Palshi, Tal. Soygaon,  
Dist. – Aurangabad, R/o. Ganga Nagar,  
Behind Panchayat Samiti,  
Yawal, Dist. – Jalgaon

.. Applicant

Vs.

1] The State of Maharashtra  
through the Police Station Officer,  
Kannad Police Station,  
Tal. Kannad, Dist. Aurangabad

2] Wahed Khan S/o Walimohammad Khan Pathan,  
Age : 56 years, Occu.: Agriculture,  
R/o. Garada, Tal – Kannad,  
Dist. – Aurangabad

.. Respondents

**WITH**  
**CRIMINAL APPLICATION NO. 5416 OF 2016**

Ushabai W/o Bhimrao Thorat,  
Age : 59 years, Occu.- Sarpanch,  
R/o Bramhani Garada, Tal. – Kannad,  
Dist. – Aurangabad

.. Applicant

Vs.

1] The State of Maharashtra  
through the Police Station Officer,  
Kannad Police Station,  
Tal. Kannad, Dist. Aurangabad

2] Wahed Khan S/o Walimohammad Khan Pathan,  
Age : 56 years, Occu.: Agriculture,  
R/o. Garada, Tal – Kannad,  
Dist. – Aurangabad

.. Respondents

**AND**  
**CRIMINAL APPLICATION NO. 5448 OF 2016**

Arvind S/o Asaram Wagh,  
Age – 36 years, Occu.:– Service  
as Gramsevak, Bramhani Garada,  
Tal – Kannad, Dist. – Aurangabad,  
R/o. Plot No.37,  
Sarswati Colony, Kannad,  
Tal – Kannad, Dist. – Aurangabad .. Applicant

Vs.

- 1] The State of Maharashtra  
through the Police Station Officer,  
Kannad Police Station,  
Tal. Kannad, Dist. Aurangabad
- 2] Wahed Khan S/o Walimohammad Khan Pathan,  
Age : 56 years, Occu.: Agriculture,  
R/o. Garada, Tal – Kannad,  
Dist. – Aurangabad .. Respondents

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Mr. A.R. Devakate, Advocate for the applicant (5415/2016 and 5416/2016)  
Mr. Vishnu Y. Patil, Advocate for the applicant (5448/2016)  
Mr. Shaikh Shafique Ahmed, Advocate for respondent no.2 in all Applications  
Mr. C.V. Dharurkar, APP for the respondent/State in all Applications

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**CORAM : A.S. CHANDURKAR, J.**  
**DATE : 28/11/2016**

**ORAL ORDER :**

Heard.

2. The applicants in these Applications apprehend their arrest in connection with Crime no.I-90 of 2016

registered at Kannad Police Station, Tq. Kannad, Dist. Aurangabad for the offences punishable under Section 420, 467, 468 r/w. Section 34 of the Indian Penal Code.

3. The proceedings arise out of a private complaint filed by the respondent no.2, cognizance of which has been taken pursuant to the directions issued under Section 156(3) of the Code of Criminal Procedure.

4. In the complaint filed by respondent no.2, it has been stated that four nurseries were sanctioned for village Garada, Tq. Kannad for the year 2012-13. In all four nurseries, specific number of saplings were to be planted, however, by preparing false record, the present applicants had committed misappropriation of an amount of Rs.24,88,629/-. The applicant in Criminal Application No.5415 of 2016 was Gramsevika at the relevant point of time. Applicant in Criminal Application No. 5448 of 2016 was the Gramsevak while the applicant in Criminal Application No.5416 of 2016, was the Sarpanch.

5. It is submitted on behalf of the applicants

that the report in question is a fallout of rivalry between the complainant and the present applicants. The amounts in question, which were duly sanctioned, had been utilized in the concerned period, but as inspection was conducted subsequently, it was noticed that the saplings were less in number. He referred to the report submitted by the Extension Officer dated 26/5/2014, in which certain procedural irregularities have been noted. He also referred to the statement of the respondent no.2 dated 7/5/2014, in which it is stated that the respondent no.2 did not have any material to show misappropriation. He submitted that two of the applicants were in service and hence as the entire material was based on documents, the custodial interrogation of the applicants was not necessary.

6. The Applications are opposed by learned Additional Public Prosecutor, by relying upon the police papers. He submitted that two inspections were conducted on 7/5/2014 and 20/5/2014. After noticing certain irregularities, report dated 26/5/2014 came to be submitted. Certain departmental action had also been taken against the Gramsevika and the Gramsevak.

7. Learned counsel for respondent no.2 also opposed the aforesaid applications. It was submitted that pursuant to the panchanama conducted, it was noticed that the misappropriation committed, on the basis of which private complaint came to be filed. As the respondent no.2 was a public spirited person, he had filed the aforesaid complaint. He therefore submitted that considering the nature of offence, the Applications deserve to be rejected.

8. Perused the police papers as well as the documents filed on record. As per the private complaint, there was misappropriation committed by the applicants in the matter of planting of saplings in the year 2013. The record indicates that on 7/5/2014 and 20/5/2014, the Extension Officer had visited the site in question and noticed certain procedural irregularities. It was concluded that though the applicant in Criminal Application No. 5415 of 2016 had been transferred, the records were not handed over. There was no co-operation from her and that certain records were retained by her. It appears that on that basis, departmental proceedings

were commenced against her and the Gramsevak. In the same report, there is reference to statement dated 7/5/2014 of the respondent no.2, in which he has stated that he had himself not seen the work in question and that he was not having any proof regarding the misappropriation. After this date, there was a subsequent inspection and then the final report was prepared.

9. Considering the aforesaid facts and as the matter pertains to the year 2013 and is based purely on the documents that are available on record, I find that the applicants herein have made out case for grant of pre-arrest protection.

10. In view of aforesaid, the following order :-

**ORDER**

I) Criminal Applications are allowed.

II) In the event of arrest of the above applicants in crime no.I-90 of 2016 registered at Kannad Police Station, Tq. Kannad, Dist. Aurangabad for the offences

punishable under Section 420, 467, 468 r/w. Section 34 of the Indian Penal Code, they shall be released on bail, upon executing P.R. bonds of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount, by each of them.

III) The applicants shall attend the concerned Police Station on 07/12/2016 and, thereafter, as per the directions of the Investigating Officer.

IV) Applicants shall take no steps to coerce the prosecution witnesses.

11. Observations made in the present order are only for deciding the present Applications.

12. Criminal Applications are allowed in the aforesaid terms and stand disposed of.

Sd/-

**[A.S. CHANDURKAR]**  
**JUDGE**

arp/