

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

CRIMINAL WRIT PETITION NO. 791 OF 2016

1. Shri. S.P. Bodkhe
Age : 40 years, Occu. Service
2. Mango Ramu Salunkhe
Gramsevak,
Age : 55 years, occu. Service,
3. Ushabai Balasaheb Parkhad,
Sarpanch
Age : 55 years, occu. Agri.,
4. Balasaheb Laxman Parkhad,
Rural Water Supply Committee,
President
Age : 60 years, Occu. Agri.,
5. Suresh Laxman Parkhad,
Rural Water Supply Committee,
Secretary,
Age : 52 years, Occu. Agri.,
6. Ukhardu Tukaram Borse,
Rural Water Supply Committee,
Secretary,
Age : 61 years, occu. Agri.,
7. Dipak Ukhardu Maware,
Technical Advisor,
Age : 38 years, Occu. Business,
8. Baburao Tukaram Kachate
Rural Water Supply Committee,
Member,
Age : 55 years, Occu. Agri.
9. Narayan Shankar Kirote
Rural Water Supply Committee,
Member,
Age : 40 years, Occu. Agri.
10. Tulshiram Sukadeo Gavhale,
Rural Water Supply Committee,

- Member,
Age : 50 years, Occu. Agri.,
11. Anil Ramdas Padhar,
Rural Water Supply Committee,
Member,
Age : 47 years, Occu. Agri.,
 12. Baliram Shivram Kharate
Rural Water Supply Committee,
Member,
Age : 60 years, Occu. Agri.,
 13. Narayan Sampat Jangle
Rural Water Supply Committee,
Member,
Age : 35 years, Occu. Agri.,
 14. Rajendra Laxman Kapase
Rural Water Supply Committee,
Member,
Age : 45 years, Occu. Agri.,
 15. Gajanan Damu Nanote
Rural Water Supply Committee,
Member,
Age : 40 years, Occu. Agri.,
 16. Bajirao Tryambak Ghyar,
Rural Water Supply Committee,
Member,
Age : 52 years, Occu. Agri.,
 17. Pandhari Tryambak Patil
Rural Water Supply Committee,
Member,
Age : 60 years, Occu. Agri.,
 18. Devidas Dashrath Patil
Rural Water Supply Committee,
Member,
Age : 71 years, Occu. Agri.,
 19. Ganesh Totaram Umbarkar
Rural Water Supply Committee,
Member,
Age : 60 years, Occu. Agri.,

20. Smt. Nandabai Vasanta Kapase,
Rural Water Supply Committee,
Member,
Age : 50 years, Occu. Household
21. Vasanta Tryambak Sapkale
Rural Water Supply Committee,
Member,
Age : 42 years, Occu. Business,
22. Yuvraj Kisan Palve
Age : 45 years, Occu. Labour,
23. Samadhan Damu Nanote
Age : 47 years, Occu. Labour,
24. A.N. Patil,
Age : 55 years, Occu. Service,
Sub Divisional Officer,
Rural Water Supply,
Sub Division, Z.P. Jalgaon.
25. S.B. Tayade,
Age : 53 years, Occu. Service Sectional Engineer
Rural Water Supply,
Sub-Division, Z.P. Jalgaon.
R/o Plot No. 28, Ompark, Bhusawal
Tq. Bhusawal, Dist. Jalgaon

Petitioner No. 1 to 23
R/o Maldabhadi, Tq. Jamner,
Dist. Jalgaon.

Petitioner No. 24 & 25
R/o Rural Water Supply,
Sub Division, Z.P. Jalgaon.

....PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Jamner Police Station,
Tq. Jamner, Dist. Jalgaon.
2. Sanjay Prakashchand Jain Munot,
Age : 41 years, Occu. Agri. & Business,
R/o Maldabhadi, Tq. Jamner,
Dist. Jalgaon.

...RESPONDENTS

.....

Mr. K.D. Bade Patil, Advocate for Applicant
Mr. A.B. Girase, PP for Respondent-State
Mr. Sandeep Mundhe, Advocate for Respondent No. 2

.....

**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 26th APRIL, 2017.

PRONOUNCED ON : 4th MAY, 2017

ORAL JUDGMENT :- [Per: K.K. Sonawane, J.]

1] Rule. Rule made returnable forthwith. Heard finally, with consent of the parties.

2] This petition is filed under section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") read with Article 226 of the Constitution of India with following prayer:

"(B). To quash and set aside the order passed by the Ld. Judicial Magistrate First Class, Jamner, Dist. Jalgaon in Misc. Criminal application No. 148/2016 dated 7.6.2016 u/sec.156(3) of Cr.P.C. And also quash and set aside the F.I.R. Bearing No. 83/2016 registered at Jamner Police Station dated 13.6.2016 against the petitioners."

3] The learned counsel appearing for the petitioners vehemently submitted that the Government of Maharashtra promulgated the scheme/project known as "Swajal Dhara" for supply of water to the rural area. The scheme was made applicable to the village Maldabhadi Tq.

Jamner, District Jalgaon under Bharat Nirman programme of Government of India. The estimated cost of the scheme was at Rs. 24,87,592/-. The concerned authority of Zilla Parishad, Jalgaon accorded technical sanction on 14-12-2006 to the estimated cost of Water Supply Scheme. However, the estimated cost of scheme was revised up to Rs. 28,48,400/-. There was a Committee constituted, namely "Rural Water Supply and Sanitation committee" (for short "Water supply Committee"). The petitioners No. 1 and 2 were the Gramsevak of Village Panchayat, Maldabhadi Tq. Jamner, Dist. Jalgaon whereas petitioners No. 24 and 25 are the employees of Zilla Parishad Jalgaon. Petitioners No. 22 & 23 are the labourers. Rest of the petitioners were the officer bearers of the Water Supply Committee during the relevant period.

4] The Water Supply Committee received the funds from the contribution of Government for implementation of the Water Supply Scheme as under :-

Date	Amount
26-03-2007	7,83,592/-
19-07-2007	2,23,883/-
19-06-2009	9,95,038/-
07-02-2015	4,82,747/-

Total	24,85,260/-

Accordingly, Water Supply Committee received total sum of Rs. 24,85,260/- for implementation of water supply scheme in the village

Maldabhadri. The learned counsel for the petitioners submitted that Respondent No. 2-Sanjay Prakashchand Jain Munot and one Mr.Damu Bhikaji Malkhede were the Chairman and Secretary of the Committee during the period 2008 to 2013. The installment of Rs. 9,41,778/- came to be deposited on 17-06-2009 in the bank account of the Committee. Respondent No. 2-Sanjay Munot being Chairman and Mr. Malkhede, being Secretary of the Water Supply Committee withdrawn the amount of Rs.2,80,656/- from the bank account. But, they completed the work of the scheme only to the extent of amount of Rs. 1,28,651/-. The concerned Block Development Officer (for short "BDO") and Deputy Engineer carried out the inspection of the work and they found that respondent No. 2 Shri. Sanjay Munot (Jain), Chairman and Mr Malkhede, Secretary of the Committee, committed fraud and misappropriation of the funds. Therefore, the criminal proceedings bearing Crime No. 57/2010 was lodged against them on 21/3/2010 for the offence under sections 420, 408, read with section 34 of the Indian Penal Code (for short "IPC"). The Sub-Divisional Officer, Rural Water Supply, Sub-Division, Zilla Parishad, Jalgaon Shri. Rajendra Mandore preferred to file First Information Report (for short "FIR") for penal action against respondent No. 2 and another.

5] The learned counsel for petitioners submitted that, in the year 2013 the '*Rural Water Supply and Sanitation Committee*' was reconstituted and Petitioner No. 4-Balasaheb Laxman Parkhad and Petitioner No. 6-Ukhardu Tukaram Borse were nominated as Chairman

and Secretary of the Committee. There were certain irregularities and deficiencies in the work. Thereafter, concerned Committee as per the directions of Chief Executive Officer, Zilla Parishad Jalgaon complied with all infirmities in the work. Therefore, the permission was granted to the Committee of the petitioners to operate the bank account to carry out and finalize the further work of the scheme. The letter of Executive Engineer, Rural Water Scheme Zilla Parishad Jalgaon dated 19-11-2014 is produced on record (Exhibit A-4).

6] According to learned counsel for the petitioners, there was no misappropriation of funds committed by the petitioners. The enquiry was carried out by the authority of Zilla Parishad, Jalgaon. The audit was also conducted from the Government approved Auditor. There were no allegations against the petitioner. But, Respondent No. 2-Sanjay Munot (Jain) taking umbrage of lodging FIR against him, filed the false and frivolous complaint before the Judicial Magistrate, First Class, Jamner.

7] The learned counsel also harped on the contentions that the learned Magistrate did not apply his mind nor he verified the gravity of the allegations and mechanically passed the impugned order which is bad-in-law. Moreover, the learned Magistrate overlooked the requirement of prior sanction under section 197 of Cr.P.C. against the petitioners, who are Government Servants. The learned counsel fervidly submitted that the impugned FIR is politically motivated and filed with an ill intention to harass the petitioners. It is an abuse of process of law. There was no compliance under section 154(1) and 154(3) of the Cr.P.C.

nor the complainant has appended his affidavit with the complaint. Therefore, the impugned criminal proceeding initiated against the petitioners deserves to be quash and set aside. The learned counsel in support of his argument relied upon the expositions of law in the case of *State of Maharashtra Versus Shashikant s/o Eknath Shinde*¹, *D.T. Virupakshappa Versus C. Subhash*², *Anil Kumar and ors Versus M.K. Aiyappa and anr.*³ and *Priyanka Shrivastava and another Vs. State of Uttar Pradesh and others*⁴, Eventually, learned counsel for petitioners fervidly contended that the petition be allowed and impugned order of learned Magistrate under section 156 (3) of Cr.P.C. and consequent proceeding of Crime No. 83 of 2016 registered at Jamner Police station be quashed and set aside.

8] Per contra, learned Public Prosecutor Mr. Girase for respondent No. 1 - State vehemently submitted that the contentions put forth on behalf of petitioners are incorrect, baseless and not considerable at all. He contends that technical sanction for the estimated costs of the scheme was accorded for Rs.24,87,592/- on 14-12-2006, but the scheme was not implemented within prescribed period and thereafter revised estimate of the proposed scheme to the tune of Rs. 28,48,400/- got sanctioned from the concerned Zilla Parishad authority. According to learned PP, in case of increase of amount in the revised estimate, more than 15% of the total amount, a proposal was required to be referred to

1 2013 ALL.MR (Cri.) 3060

2 AIR 2015 SC 2022

3 (2013) 10 SCC 705

4 (2015) 6 SCC 287

the Government for Technical sanction as per Government Resolution dated 22-05-2008. In this case, the Committee of the petitioners itself forwarded revised estimate and get it sanctioned from the Zilla Parishad Authority by submitting forged documents. He further alleged that in the month of December, 2002, in all 106 villagers of Maldabhadi on their own volition contributed amount of Rs.2,80,000/- for the Water Supply Scheme and deposited the same in the Bank account of Committee. But, the Committee of the petitioners had withdrawn the amount under pretext that it was deposited as an advance amount in the Bank and thereby misappropriated the funds. The contribution of funds by the community were not applicable to the present scheme as per Government Resolution dated 09-07-2007. This amount ought to have been returned to the villagers, who have contributed the same. But, the petitioners in spite of refund of the amount to the villagers misappropriated the same. According to learned PP, the petitioners also indulged in the cash transaction for purchase of articles valued more than Rs. 1000/-, which are not permissible as per the rules. He explained that amount of Rs. 60,000/- was paid to one Mr. Prakash Parkahd, who was not registered Contractor - Engineer. Moreover, the amount of Rs. 82,621/- was paid by cash to one Mr. Deepak Manware towards supervision charges. The learned PP raised doubt about the genuineness of the audit report as the record for the year 2009-2010, was not made available to the Auditor and despite the same the earlier transaction of the period 2009-2010 were shown audited in the audit report. There were transactions in the name of President and Secretary of the Committee

without any approval in the meeting of Gram Sabha. There are overwriting on the vouchers, bills for purchase of material to the Water Supply Scheme. There was also enquiry conducted by SDO of Zilla Parishad and it was transpired that President and Secretary as well as members of the Water Supply Committee, committed misappropriation of the huge funds of the Government by preparing forged and fabricated record. The learned PP explain the circumstances in detail and submitted that the allegations nurtured against the petitioners are serious in nature. The circumstances *prima facie* demonstrate that the cognizable offences have been committed by the petitioners. Therefore, he prayed to dismiss the petition.

9] The learned counsel appearing for respondent No. 2 also raised objection to the contentions propounded on behalf of petitioners. He stepped into the shoe of learned PP appearing for respondent No. 1, for the allegations of mischief played on behalf of petitioners and misappropriation of funds. He submitted that the audit of the account of Water Supply Scheme was carried out by the Finance Department, Zilla Parishad, Jalgaon. But, it was improper and imperfect one. The Auditor did not scrutinized each and every transaction of the scheme minutely. The expenses shown are incorrect and against the rule. The expenses were shown incurred without any necessity. The quality of the work of the scheme was also poor and substandard materials were used for the scheme. There were complaints about quality and quantity of the work of scheme. Therefore, in the year 2009-2010 Committee came to be

constituted for enquiry into the allegation. The report of the Committee itself would indicate that the expenses of Rs.9,24,172/- incurred were all incorrect, illegally and without any work. The amount was withdrawn from the bank accounts without any permission from the Gram Sabha.

10] The learned counsel Mr. Munde submits that the cash book and the proceedings for the year 2009-2010 were not made available and therefore audit of there relevant period could not be carried out. In the circumstances, the Audit Report in regard to transaction of this period deserves to be discarded. There were directions of the CEO of Zilla Parishad, Jalgaon for registration of Crime in case the irregularities are found in the affairs of the Committee as per Government Circular dated 06-12-2007. But, no any penal action was initiated against the petitioners by the concerned BDO,Panchayat Samiti, Jamner. It has been submitted that villagers and respondent No. 2 also filed representation to the Government of Maharashtra for enquiry about illegal activities and misappropriation by the petitioners. Thereafter, enquiry was directed to be conducted for verification of the allegations made on behalf of respondent No. 2 and others. The concerned Minister also issued directions for the requisite enquiry into the allegations, but no any action was initiated against the petitioners by the concerned authority of the Zilla Parishad, Jalaon.

11] According to learned counsel Mr. Munde, actual work of the scheme was valued at Rs. 19,17,004/-. But, the amount disbursed for the

scheme was to the tune of Rs. 25,51,123/-. Therefore, inference can be drawn that amount of Rs. 9,12,119/- from the public funds made available for the scheme were misappropriated and swindled by the petitioners. The learned counsel for respondent No. 2 submitted that petitioners No. 22 and 23 are the labours and more than amount of Rs. 55,000/-cash was paid to them without any reasonable cause. The amount spent for the scheme by the petitioners was without following procedural formalities and against the Rule. The learned counsel for respondent No. 2 asserted that all the petitioners in collusion with each others indulged in illegal activities and misappropriated the public funds, while implementing Water Supply Scheme at village Maldabhadi. The allegations in the FIR *prima facie* constitute cognizable offence against them. According to him, the learned Magistrate has correctly applied his mind and passed the impugned order for investigation under section 156(3) of the Cr.P.C., which is just, proper and legal one. Therefore, he prayed not to nod in favour of petitioners and dismiss the petition.

12] We have given anxious consideration to the submissions canvassed on behalf of both sides. We have also delved into the relevant documents produced on record. At this juncture, it is to be noted that there are circumstances, which are not put into controversy on behalf of both sides. It is an admitted fact that petitioner No. 4- Balasaheb Parkhad and petitioner No. 5 Suresh Parkhad were the President and Secretary of the Water Supply Committee for the year 2003-2008 and, thereafter, respondent No. 2 - Sanjay Prakashchand (Jain) Munot and one Mr. Damu

Bhikaji Malkhede were nominated as President and Secretary of the Rural Water Supply and Sanitary Committee of village Maldabhadi for the period April-2008 to January-2013. Thereafter, once again petitioner No. 4- Balasaheb Parkhad and one Mr. Yuvraj Kapase were appointed as President and Secretary of the Committee for further period since January- 2013 till April-2014 and thereafter also petitioner No. 4- Balasaheb Parkhad was the President of the Committee up-till March, 2015 with Secretary Petitioner No. 6 - Mr. Ukhardu Tukaram Borse.

13] It is an admitted fact that respondent No. 2 - Sanjay Munot preferred the private complaint bearing Miscellaneous Criminal Application No. 148 of 2016 seeking investigation under section 156(3) of the Cr.P.C. for the allegations of misappropriation of funds, forgery, cheating etc. against the petitioners. The learned Magistrate appreciated the circumstances and directed the Police of Jamner Police Station, District Jalgaon for investigation of the allegations under section 156(3) of the Cr.P.C. vide order dated 7th June, 2016. Pursuant to the directions of the learned Magistrate, the Police of Jamner Police Station registered the impugned FIR bearing Crime No. 83 of 2016 for the offence punishable under sections 408, 409, 420, 437, 464, 465, 468, 471, 477 read with section 34 of the IPC and set the penal law in motion.

14] Being aggrieved with the impugned order dated 7th June, 2016 , directing investigation under section 156(3) of Cr.P.C. and consequently registration of FIR bearing Crime No. 83 of 2016, the petitioners approached to this Court seeking relief to quash and set aside the

impugned FIR by exercising inherent powers under section 482 of the IPC read with section 226 of the Constitution of India.

15] At the inception, it has been contended on behalf of petitioners that impugned FIR is totally false, baseless and filed only with ulterior motive to wreak vengeance. There were no misappropriation or forgery committed on the part of petitioners. In contrast, respondent No. 2 and his associate were President and Secretary of the Water Supply Committee of village Maladabhadi during the relevant period since April-2008 to January, 2013. There were allegations that, the amount of public fund worth Rs. 9,41,778/- came to be deposited in the bank account of Water Supply Committee on 17-06-2009. However, respondent No. 2 and the Secretary in connivance with each other withdrawn the amount of Rs. 2,80,656/- from the bank account under the pretext of work of Water Supply Scheme. But, after complaint, an enquiry was conducted and it was revealed that the Committee has completed the work only at the valuation of Rs.1,28,651/- and rest of the amount came to be misappropriated. Therefore, the concerned BDO, Panchayat Samiti, Jamner, after directions from higher authority filed FIR bearing Criminal Miscellaneous Application No. 57 of 2010 to the Police Station, Jamner under section 408, 420 read with section 34 of the IPC against respondent No. 2. Taking umbrage of criminal proceeding respondent No. 2 initiated the present false and frivolous proceedings against the petitioners.

16] Admittedly, there are counter allegations against each other on behalf of petitioners and respondent No. 2 for misappropriation of public

funds made available for implementation of Water Supply Scheme in the village Maldabhadi Tahsil Jamner. According to respondent No. 2, during the period 2013-2014 and 2014-2015 petitioners indulged in illegal activities of cash transaction, forgery etc. and misappropriated public funds to the tune of 15,17,619/- made available for the Water Supply Scheme.

17] Taking into consideration the nature of allegations, we find it just and proper to cause enquiry to ascertain genuineness and veracity of the accusation of forgery, misappropriation, cheating etc. made against the petitioners and for that purpose it would be essential to consider and appreciate relevant documents pertaining to the Water Supply Scheme produced on record. We are cautious that it would be improper and impermissible to appreciate defence of the petitioners / accused or embark into judicial enquiry to ascertain merits of the accusation. But, the documents uncontroversial in nature produced on record on behalf of petitioners/accused, if considered and in case it is found that the accusation against accused are unsustainable and improbable, in such peculiar circumstances, it is incumbent to appreciate these documents while exercising powers under section 482 of the Cr.P.C., to meet the ends of justice and to prevent abuse of process of law. It would be profitable to take recourse of the observations of Their Lordships of Apex Court in the matter of *Anita Malhotra Vs. Apparel Export Promotion Council and another*⁵, in paragraph No. 20 of said Judgment it has been observed as below:

⁵ (2012)1SCC 520

“20. As rightly stated so, though it is not proper for the High court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.”

In view of aforesaid guidelines delineated by the Honourable Apex Court, we do not find any impediment to appreciate the documents placed on record, particularly, official documents of the Water Supply Scheme of the Zilla Parishad, Jalgaon to find out the crux of the matter.

18] It is worth to mention that tenure of earlier water supply committee of the petitioner No.4 was since 26.1.2003 to 31.3.2008. The respondent No.2 made the allegations that the petitioner Nos. 4 and 5 withdrawn an amount of Rs. 2,80,000/- collected from the villagers being their contribution in the scheme. The said withdrawal was without any intimation to other members of the Committee and without any record but the amount was withdrawn with malafide intention to commit mischief of fraud. In order to ascertain the veracity of these allegations, we have verified the additional affidavit filed on behalf of petitioner. It has been asserted that as per the requirement, the amount of Rs.2,80,000/- were contributed by the villagers for implementation of the scheme. Thereafter, the proposal was forwarded by the Gram Panchayat to the concerned authority, but it was not approved and,

therefore, the Committee came to be dissolved. However, prior to dissolution of the earlier committee in the year 2005, the said amount was withdrawn and refunded to the respective villagers who have contributed the same for the implementation of the scheme. The petitioners placed on record the Audit Report of the accounts of Water Supply Committee for the year ending 31.3.2006. In the Audit Report, it has been categorically mentioned that the books of accounts were kept and maintained in proper manner. The expenditure incurred were sanctioned by the Gram Sabha as well as approved by the concerned authority. The concerned auditor has certified that the entire transaction occurred in the year 2005-06 were as per the prescribed rules. It is to be noted that the concerned auditor did not raise the objections about the withdrawal of fund of public contribution by the petitioners' committee during the relevant period.

19] Moreover, the respondent No.2 had taken over the charge of the committee being President since the year 2008, but, during his stint also he did not ventilate the grievances for withdrawal of the amount of public contribution on the part of the petitioners. But, after efflux of colossal period the respondent No.2 cast the allegations of misappropriation of funds by the petitioners on withdrawal of amount of public contribution. Therefore, belated objections in the year 2015-2016 on the part of respondent No.2 created suspicion about the veracity and genuineness of the allegations against the petitioners. In contrast, the relevant documents on record adumbrates that the transactions during the relevant period were valid as per rules.

20] The respondent No.2 also assailed that petitioners during the period 2013 to 2015 misused the funds of the scheme and without any quality and quantity of work, incurred the expenses with ill-intention to misappropriate the same. The petitioners in connivance with each other, indulged in the illegal activities of fraud and cheating etc. There were several irregularities and illegalities committed by the petitioners. According to respondent No.2, several complaints were made to the concerned authority but they did not take cognizance of the same nor any action was initiated against the petitioners. Eventually, the respondent No.2 approached to the learned Magistrate and filed present private complaint for penal action against the petitioners.

21] We have ventured to go through all the relevant documents produced on record which are uncontroversial in nature. It seems that after the criminal proceedings initiated against the respondent No.2, by the authority of Zilla Parishad, vide FIR bearing Crime NO. 57 of 2010 in the Month of March, 2010, one, Shri Ramdas Dayaram Patil, filed the complaint to the District collector, Jalgaon in the public meeting on 6.9.2010. He ventilated the grievances about the illegality and misappropriation of public fund while implementation of the scheme of Water Supply Scheme in village Maldabhadi. The District Collector, bade the Chief Executive Officer, Zilla Parishad, Jalgaon to conduct the enquiry. Accordingly, the inspection squad was constituted, comprising Deputy Engineer, Assistant Executive Engineer, Sectional Engineer etc. They all visited to the site of the Water Supply Scheme and carried out

the inspection. Thereafter, the Inspection Squad forwarded its report to the Chief Executive Officer, Zilla Parishad, Jalgaon. But, the opportunity of hearing was not given to the petitioners and, therefore, they preferred Writ Petition No. 460 of 2011, before this court to redress their grievances. Thereafter, as per the directions of this Court, the petitioner No.4 Shri Parkhad, was given an opportunity of hearing before the concerned Chief Executive Officer, for the charges pitted against him. The petitioner No.4 explained all the circumstances and produced the relevant documents. After appreciating the relevant documents produced on record, the concerned Chief Executive Officer, rescinded and revoked the earlier allegations made against the petitioners and granted permission to continue the work by operating the bank account. The relevant order of the CEO, Zilla Parishad, Jalgaon, dated 11.8.2014, is produced on record for perusal. The documents of Laboratory Testing Report of water, Report of Geological survey, Report of Audit of the Account, which were conducted by the panel Auditor of CAG, of Government of Maharashtra, for the entire period and documents of measurement book of the work of scheme and its valuation reports are all placed on record. These documents demonstrate that the entire affairs of the Water Supply Committee were checked and verified time and again by the authority of the concerned Department. The petitioners were allowed to continue the work of Water Supply Scheme. There were no accusations of misappropriation of funds revealed during the course of enquiry and verification of the documents by the concerned authorities. It is true that there were some directions issued by the CEO,

as per the order dated 11.8.2014, for compliance of some deficiencies in the work of the scheme. But, the relevant letter correspondence indicate that the Committee of the petitioners also complied with all the infirmities and, thereafter, the petitioners were allowed to operate the bank account and proceeded further for completion of the work of the scheme. The grievance of the respondent No.2 and his associates Shri Ramdas Dayaram Patil were already verified, scrutinized and checked on multiple occasions by the concerned authority of the Government of Maharashtra. The complaints filed on behalf of respondent No.2 and his associate Shri Ramdas Patil were dealt with by the Government Authorities. But, all the allegations were turned down for want of circumstances adverse in nature against the petitioners. There was also an attempt of hunger strike by the disgruntle Mr. Ramdas Patil, the associate of the respondent No.2.

22] However, pursuant to continuous insistence on the part of respondent No.2, once again the show cause notices were issued on 15.1.2016 to 4 members of the Water Supply Committee. The petitioners gave reply to the show cause notices but the decision on those notices are yet awaited. Meanwhile, the respondent NO.2 preferred the present private complaint under section 200 of Cr.P.C. before the learned JMFC, Jamner, pursuant to which the impugned FIR came to be registered against the petitioners, which is the subject matter of the present petition.

23] In view of the aforesaid chequered history of the progress of

work of the Water Supply Scheme implemented in village Maldabhadri, it would visualize that after the FIR bearing Crime No. 57 of 2010 against the respondent No.2 filed in the year 2010, there were complaints emanated against the petitioners on the part of respondent No.2 and his associate Mr. Ramdas Patil. The attending circumstances would show that the duo did not succeed in their attempt till the year 2016. There were multiple inquiries pertaining to the allegations of irregularities and illegalities into the quality and quantity of the work of the scheme as well as misappropriation of funds. But, even after due enquiry and audit of accounts by the Government authorities, no infirmities or irregularities were discovered to show complicity of petitioners for the allegations against them. Admittedly the work of the scheme during the period 2013-15 was carried out under the supervision and inspection of the authority of the Government of Maharashtra. It is also essential to appreciate that the work of the Water Supply Scheme was re-started on the backdrop of illegal activities and fraud as well as misappropriation of public fund on the part of respondent No.2. Therefore, the superior officers of the Zilla Parishad, Jalgaon, must have been vigilant and taken care for completion of rest of the work of the scheme without any irregularity and illegality. It was an obligation of these officers to take every precaution for maintaining the quality and quantity of the work of scheme as prescribed under the norms and rules. In such circumstances, it is preposterous to appreciate that there would have been any misappropriation of fund by the petitioners during their tenure since 2013 to 2015. It is also incomprehensible to consider that the office

personnel of the Zilla Parishad, Jalgaon would indulge in such illegal activities of misappropriation of funds, as alleged by the respondent No.2. We find force in the contentions put forth on behalf of the petitioners that the impugned FIR is the fallout of revengeful attitude and demeanour of the respondent No.2 and his associate Ramdas Patil. It is an abuse of process of law. It appears that the respondent No.2 attempted to utilize the jurisdiction of the Court of Magistrate for his oblique purpose to wreak vengeance. The respondent No.2 is also facing criming proceedings for the same allegations initiated at the instance of authority of the Zilla Parishad, Jalgaon and it is alleged that taking umbrage of the same, he filed the false and frivolous complaint against the petitioners. Obviously, such kind of abuse of process of law would not be at all sustainable and maintainable one.

24] It is the settled rule of law that jurisdiction under Section 482 of Cr.P.C. has to be exercised very sparingly and with great deal of caution. It has been delineated that in exercise of its jurisdiction the High Court is not to examine the matter superficially but it is essential to be seen that the criminal proceedings are not a short-cut of other remedies available in law. Undisputedly, the inherent powers under Section 482 of the Cr.P.C. has to be exercised to prevent abuse of process of any court of law, or otherwise to secure the ends of justice. In the case of *State of Karnataka Vs. L. Muniswamy, reported in 1977 Cri.L.J. 1125*, the Hon'ble Supreme Court has laid down that in the exercise of the wholesome powers under Section 482 of the Code, the

High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the court of law or that the ends of justice require that the proceedings are to be quashed.

25] In the matter of *State of Haryana vs. Ch. Bhajanlal and others AIR 1992 SC 604*, in para.104, it has been observed as below :-

104. Speaking for the Bench, Ranganath Mishra, J. as he then was in *Madhavrao Jiwaji Rao Scindia V. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 : (AIR 1988 SC 709) has expounded the law as follows : (at p.711 of AIR)

“ The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice is permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”

26] The Honourable Apex Court, in the case of *G. Sagar Suri and another vs. State of U.P. And others, (2000)2 SCC 636*, in para. 8 has held as under :-

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its

jurisdiction High court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

27] In the instant case, the factual score referred (supra) categorically demonstrate that the petitioners were related with the Water Supply Committee during the period 2003 to 2008 and thereafter, 2013 to 2015. The allegations nurtured on behalf of the respondent No.2 Sanjay Jain Munot and his associate Ramdas Patil, all were considered by the authority of the Govt. of Maharashtra time and again. There were requisite enquiries conducted to test the veracity of the allegations nurtured against the petitioners. The audit of the accounts were also carried out by the Government approved auditors. The report of the Geological Survey department, and allied institution also verified the quantity and quality of the work of the scheme during the relevant period. In such circumstances, the inescapable conclusion/inference can be drawn that prior to lodging the FIR against the respondent No.2, there were no complaints of misappropriation of public fund of the scheme in the year 2006 nor there were any objections about the cash transactions or purchase of material or expenses incurred for the scheme etc. upto September, 2010. All the allegations were cropped up

thereafter on lodging the FIR bearing Crime No.57 of 2010 against the respondent No.2, in the month of March, 2010. Therefore, we are of the considered opinion that the impugned FIR registered for the penal action against the petitioners is an abuse of process of law. The allegations that the respondent No.2 filed the impugned FIR against the petitioners with purported motivation to vent his wrath, appears just, proper and considerable one. The attempt of the respondent No.2 is evidently to rope in all the officials who are concerned with the Water Supply Scheme during the period 2013 to 2015. In such circumstances, we have no hesitation to arrive at the conclusion that the impugned FIR is an abuse of process of law, filed with an ill-intention to harass the petitioners. Therefore, the respondent No.2 can not be allowed to wreak vengeance by utilizing the short cut remedy of lodging the FIR against the petitioners. Hence, there is no impediment to quash and set aside the impugned FIR by exercising the inherent jurisdiction under Section 482 of Cr.P.C. and Article 226 of the Constitution of India. In the case of ***State of Haryana vs. Ch. Bhajanlal***, (Supra) the Hon'ble Apex Court delineated that if the criminal proceeding is initiated with oblique motive, it should be quashed in the interest of justice. Taking recourse of these guidelines, we do not find any impediment to exercise powers under Section 482 of the Cr.P.C. in favour of petitioners.

28] The another legal objection raised on behalf of petitioners is in regard to non compliance of the provisions of Sections 154(1) and 154(3) of Cr.P.C. prior to avail the remedy under section 156(3) of

Cr.P.C. It has also been brought to the notice of this Court that the complainant/respondent No.2 did not append his affidavit duly sworn, accompanied with his complaint instituted before the Magistrate. The non compliance of these mandatory legal provisions found detrimental to the impugned criminal proceeding initiated against the petitioners. It has also been alleged that the impugned order of the learned Magistrate under Section 156(3) of Cr.P.C. came to be passed without application of judicious mind. The learned Magistrate did not appreciate the circumstances on record in proper manner and mechanically passed the impugned order for investigation under Section 156(3) of Cr.P.C.

29] The intense scrutiny of the attending circumstances on record reflects that the arguments canvassed on behalf of petitioners appear sustainable and considerable one. In the matter of **Priyanka Shrivastava Vs. State of Uttar Pradesh reported in (2015) 6 SCC 287**, Their Lordships observed in para. Nos. 26 and 27, as follows:-

“26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. Applications are to be

supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

30] The Division Bench of this Court at Nagpur in the case of ***State of Maharashtra vs. Shashikant Eknath Shinde (2013) All MR (Cri.) 3060***, dealt with the legal issue relating to the application of mind by the Magistrate while passing the order under Section 156(3) of Cr.P.C. It has been held in para. 28,29 and 30 as under :

28. It can, thus, be seen that the Apex Court in unequivocal terms has held that where a jurisdiction is exercised on a complaint petition filed under [Section 156\(3\)](#) or [Section 200](#) of the Code of Criminal Procedure, the Magistrate is required to apply his mind.

29. The Apex Court in the said case has referred to its earlier observations made in the case of [Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others](#), reported in (1998) 5 SCC 749),[1998 ALL MR (Cri.) 144 (S.C.)] which reads thus:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The magistrate has to carefully scrutinize

the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

30. *In view of the aforesaid Judgments of the Apex Court, it can, thus, clearly be seen that when the Magistrate passes order directing investigation under [Section 156 \(3\)](#) of [Cr.P.C](#), it is necessary that, prior to doing so, he should apply his mind to the case before him. Least that is expected of the Magistrate, is to verify from the averments of the complaint as to whether the ingredients to constitute the offence/s complained of have been made out or not. As such the order under [Section 156\(3\)](#) of Cr.P.C., should depict the application of mind. No doubt the Magistrate is not expected to give elaborate Judgment at that stage. However, the least expected is that the order should depict application of mind and as to how the complaint discloses the ingredients to constitute the offence complained of."*

31] In the light of the aforesaid principles of law, it is mandatory for the learned Magistrate to apply his mind to the allegations made in the complaint and only when the allegations nurtured on behalf of complainant make out the ingredients to constitute a cognizable offence, then only the learned Magistrate can pass order of investigation under Section 156(3) of the Cr.P.C.

32] In the instant case, we find that there was no compliance of mandatory provisions of Section 154(1) and 154(3) of Cr.P.C. No doubt, there was a cursory remark by the learned Magistrate that, “the record also reflects that the complainant approached, the concerned police other authorities as well as the Superintendent of Police, Jalgaon, but till date no action has been taken against the accused”. However, there are no documents produced on record except the averments in the complaint/application about the mandatory compliance of Section 154(1) and 154(3) of Cr.P.C. These legal infirmities in the impugned order passed by the learned Magistrate definitely deserve to be considered in favour of petitioners. There was also no affidavit duly sworn by the complainant appended with the complaint/application to initiate penal action against the petitioners. All these circumstances are sufficient to draw inference that the learned Magistrate did not apply his judicious mind and mechanically passed the impugned order. He did not appreciate the nature and gravity of the allegations, even though, he had observed that there were no specific sections of IPC mentioned in the complaint. In such circumstances, we do not find any impediment to draw the inference that the learned Magistrate ventured to deal with the complaint/application of respondent No.2 in a very casual manner ignoring the compliance of mandatory provisions of law. On this legal aspect also, the impugned FIR deserves to be quashed and set aside, which was registered pursuant to the order passed by the learned Magistrate without jurisdiction.

33] In the above premises, we are of the considered opinion that the impugned order of the learned Magistrate under Section 156(3) of Cr.P.C. and consequent proceeding of registration of Crime bearing No. I-83 of 2016, appears not sustainable and maintainable within the purview of law. In contrast, the circumstances adumbrates that the impugned criminal proceedings came to be initiated against the petitioners with malafide intention to wreak vengeance. Therefore, the allegations that the impugned FIR is an abuse of process of law, found reasonable and proper. It is expedient in the interest of justice not to allow the prosecution to continue against the petitioners at the behest of respondent No.2. Therefore, the impugned order of the learned Magistrate directing investigation under Section 156(3) of Cr.P.C. and consequent proceeding of registration of FIR deserves to be quashed and set aside. Hence, we do not find any impediment to allow the petition.

34] As referred supra, show cause notices were issued to 4 members of the Water Supply Committee on 15.1.2016 and the concerned 4 members have also given reply to the show cause notices, but the decision on those notices are yet to be awaited. Needless to state that the Government authority will be at liberty to proceed further for appropriate decision on the said show cause notices issued to 4 members of the Water Supply Committee for taking them to the logical end. While taking decision in regard to those show cause notices, the authority shall not be influenced by the findings expressed hereinabove.

34] In the light of aforesaid observations, the writ petition stands allowed. Rule is made absolute in terms of prayer clause (B). The impugned FIR is quashed and set aside. Writ petition stands disposed of accordingly.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

grt/-