

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4949 OF 2016

Balaji s/o Vishwanath Patil,
Age-45 years, Occu:Agril.,
R/o-Borgaon (A.K.), Tq-Loha,
Dist-Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Loha,
Tq-Loha, Dist-Nanded,
- 2) Indrajit s/o Nagorao Mogale,
Age-57 years, Occu:Service,
As Block Development Officer,
Panchayat Samiti, Loha,
R/o-Loha, Tq-Loha, Dist-Nanded,
- 3) Kalyan s/o Raosaheb Gayakwad,
Age-Major, Occu:Labour,
R/o-Borgaon (A.K.), Tq-Loha,
Dist-Nanded.

...RESPONDENTS

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Mr. E.P. Sawant Advocate h/f. Mr. M.P. Kale
Advocate for Applicant.
Mr. D.R. Kale, A.P.P. for Respondent No.1.
Mr. R.O. Awsarmol Advocate for Respondent No.2.
None present for Respondent No.3.

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WITH

CRIMINAL APPLICATION NO.4232 OF 2016

Janabai d/o Ramrao Phad,
Age-27 years, Occu:Gramsevak,
R/o: At Post-G.P. Bharaswada,
Tq-Loha, Dist-Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Loha,
Tq-Loha, Dist-Nanded,
- 2) Shri Indrajit s/o Nagorao Mogale,
Age-Major, Occu:Service, Working as
Assistant Block Development Officer,
Panchayat Samiti, Loha,
Tq-Loha, Dist-Nanded,
R/o-Togari, Tq-Udgir, Dist-Nanded,
- 3) Kalyan s/o Raosaheb Gaikwad,
Age-Major, Occu:Agri.,,
R/o-Borgaon (A.K.), Tq-Loha,
Dist-Nanded.

...RESPONDENTS

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Mr.P.D. Bachate Advocate for Applicant.
Mr.D.R. Kale, A.P.P. for Respondent No.1.
Mr.R.O. Awsarmol Advocate for Respondent No.2.
None present for Respondent No.3.

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

DATE OF RESERVING JUDGMENT : 10TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT: 13TH APRIL, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Since both the Applications take exception to the First Information Report vide Crime No.25 of 2016 registered with Police Station, Loha, Dist-Nanded on 20th February, 2016, for the offence punishable under Section 420 and 409 read with 34 of the Indian Penal Code, both the Applications are heard together and being disposed of by this common Judgment and Order.

3. The brief facts as disclosed in the Applications are as under:

. It is submitted that Applicant in Criminal Application No.4949 of 2016 was working as Sarpanch of village Borgaon(A.K.) and had taken various development works in the village, out of which some work has been completed whereas some work was incomplete. It is submitted that Applicant in Criminal Application No.4232 of 2016 was appointed as a Gramsevak at Borgaon (A.K.) and had taken the charge of said post on 22nd February 2012. It is further stated in Criminal Application No.4949 of 2016 that, one Kalyan Raosaheb Gaikwad of village Borgaon posing himself as a social worker, had filed so many complaints for various reasons to various authorities including private complaint before the Judicial Magistrate, First Class, Loha. The said complaint making allegations against the Applicants and other thirteen persons, was dismissed by the Judicial Magistrate, First Class, Loha. Thereafter said Kalyan Raosaheb Gaikwad filed complaint with the Lokayukta making various allegations. As such the Lokayukta

directed the Chief Executive Officer to make enquiry. As per the directions of the Lokayukta, the Chief Executive Officer, Zilla Parishad, Nanded appointed the committee under the President-ship of the Deputy District Project Co-ordinator, Employment Guarantee Scheme, Zilla Parishad, Nanded. The said committee after visiting various offices, inquired about an allegations. Out of said allegations, in some of the allegations said Committee found prima facie case of irregularities committed by the Sarpanch, Gram Rojgar Sevak, Gram Sevak and Post Master. Accordingly committee gave report that the Sarpanch, Gram Rojgar Sevak, Gram Sevak and Post Master have committed irregularities and ultimately resulted in misappropriation of public money.

. The Applicant in Criminal Application No.4949 of 2016, has denied all the allegations levelled against him by filing reply before the

Lokayukta and also before the Chief Executive Officer, Zilla Parishad, Nanded. It was contended in the said reply that without considering the explanation of the Applicant, only on the basis of political pressure, Block Development Officer, Panchayat Samiti, Loha filed complaint with Police Station Officer, Loha alleging that during the period from 1st April, 2012 to 31st April, 2013 names of Kalyan Gaikwad, Godavari Gaikwad, Deelip Gaikwad, Kalpana Gaikwad are appearing in the attendance register but they have not worked and an amount of Rs.10,978/- as shown in the attendance register, was misappropriated by the then Gram Sevak, Gram Rozgar Sevak, Sarpanch in collusion with each other. It is submitted that on perusal of the complaint it is clear that no specific role is attributed to the Applicants and only vague and baseless allegations are made. There is no prima facie evidence against the Applicants to proceed with the complaint. Hence the Applications are filed praying therein to

quash and set aside the impugned First Information Report.

4. Learned counsel appearing for the Applicants invites our attention to the contents of the complaint filed by the complainant Kalyan Raosaheb Gaikwad bearing O.M.C.A. No.1 of 2014 and order passed by the Judicial Magistrate, First Class, Loha in the said complaint. It is submitted that initially the complainant filed the complaint against the Applicants before the Judicial Magistrate, First Class (J.M.F.C.), Loha wherein also same allegations, like in the present First Information Report, were made against the Applicants. There were allegations of misappropriation of the amount in the name of deceased persons, minors and handicapped persons. In the said complaint, order was passed by the J.M.F.C., Loha on 1st January, 2014 and matter was kept for recording verification of the complainant. Learned counsel invites our attention

to the order passed by the J.M.F.C., Loha on 8th June, 2015 on merits of the said complaint and submits that when the very same allegations are already gone into by the J.M.F.C., Loha and if said allegations have been already considered and the complaint is dismissed, in that case the First Information Report is not maintainable. It is submitted that the complainant therein failed to establish the nexus of the Applicants with the alleged crime. Even in that case before the J.M.F.C., Loha, the complainant did not adduce sufficient evidence and as a result the said complaint was dismissed. It is submitted that thereafter also the Lokayukta directed enquiry and accordingly enquiry was also conducted and it is stated in the said enquiry report that there are certain financial irregularities and there appears to be some truth in the complaint made by the complainant to the Lokayukta and therefore appropriate action needs to be taken against Gram Sevak, Gram Rojgar Sevak and Sarpanch. It is

submitted that an amount of Rs.10,978/- was already deposited by the Gram Sevak. It is submitted that if at all there is any financial irregularities, the Department is free to take recourse to the civil remedy or can initiate the enquiry, however, certainly the further investigation on the basis of the impugned First Information Report, is not warranted.

5. Learned counsel appearing for the Applicant in Criminal Application No.4232 of 2016 submits that for the relevant period for which allegations of misappropriation are made or when the payment was actually disbursed, the Applicant therein was not working as Gram Sevak. Applicant had taken the charge of post of Gram Sevak on 22nd February, 2012. The period, for which there are allegations of misappropriation, is from 4th May, 2011 to 7th June, 2011. Therefore, the learned counsel submits that even if the allegations in the First Information Report are taken as it is,

no offence is made out against the Applicant.

6. Learned A.P.P. appearing for the State, relying upon the investigation papers and the contents of the First Information Report, submits that prima facie alleged offences are disclosed, therefore those needs further investigation.

7. Though Respondent No.2 was represented through Advocate and number of opportunities were given to him, no reply was filed by him. None appears for Respondent No.3 and no reply was filed on behalf of Respondent No.3.

8. We have considered the submissions of the counsel appearing for the Applicants and also the learned A.P.P. appearing for the State.

9. We have carefully perused the allegations in the complaint filed by one Shri Kalyan Raosaheb Gaikwad in the Court of J.M.F.C., Loha and the

detail order passed by the J.M.F.C., Loha on the said complaint on 8th June, 2015. If the averments in the said complaint are compared vis-a-vis allegations made in the impugned First Information Report, it is crystal clear that similar allegations are levelled in the First Information Report. Learned J.M.F.C., Loha, by reasoned order, has dismissed the complaint with observations that the complainant therein has failed to file evidence in support of allegations made in the complaint that the amount is misappropriated by the Applicants, there is no seal of the office on the documents produced on record and that the complainant therein did not take steps even after filing report by the police, and ultimately conclusion was reached by the J.M.F.C., Loha that there is no substance to issue process against the Applicants.

10. As already observed, in the present case also though the role of Respondent No.2 is

important, in as much as he has lodged the First Information Report, however he has not given any instructions to his Lawyer to put forth his contention. In that view of the matter, in our opinion, the Applicants should not face the mental agony of facing the investigation and also the trial when already on the same set of allegations, the J.M.F.C., Loha has entertained the complaint bearing O.M.C.A. No.1 of 2014 and dismissed the same on merits. The total amount involved is Rs.10,978/- and as contended by the learned counsel appearing for the Applicants, the said amount is already deposited in the Government Treasury. As already observed, pursuant to the directions given by the Lokayukta that there appears to be financial irregularities, it may be open for the Respondent Authorities to take appropriate steps including initiating departmental enquiry, if any, against the Gram Sevak, Gram Rojgar Sevak and also against the Sarpanch for recovery, if at all the said amount

is not yet deposited.

11. In our considered view, when the J.M.F.C., Loha, competent Court of jurisdiction, has already entertained the complaint on the same set of allegations and dismissed the said complaint, it is not desirable that the Applicants should once again face the investigation.

12. In that view of the matter the impugned First Information Report deserves to be quashed to the extent of present Applicants. Accordingly the First Information Report vide Crime No.25 of 2016 registered with Police Station, Loha, Dist-Nanded on 20th February, 2016, for the offence punishable under Section 420 and 409 read with 34 of the Indian Penal Code, is quashed and set aside to the extent of present Applicants.

13. Both the Criminal Applications are allowed and same stand disposed of accordingly. Rule made absolute, in above terms.

14. However, we make it clear that it will be open for the Respondent Authorities to take all possible steps on civil side on the basis of enquiry report submitted on 1st January, 2016 by the Deputy District Project Co-ordinator (M.N.G.S.), Employment Guarantee Scheme, Zilla Parishad, Nanded.

[K.K. SONAWANE, J.]

asb/APR17

[S.S. SHINDE, J.]