

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

CRIMINAL APPLICATION NO. 6036 OF 2016

1. Bhagwat s/o Shrirang Soat,
Age 56 years, Occu. Agri.,
2. Shivkanya w/o Bhagwat Soat,
Age 47 years, Occu. Household
3. Sham s/o Bhagwat Soat,
Age 27 years, Occu. Service
4. Vishal s/o Bhagwat Soat,
Age 29 years, Occu. Service
5. Hanmant s/o Jaywanta Pawar,
Age 45 years, Occu. Labour

R/o Tandulwadi, Taluka and
District Latur

.. Applicants

Versus

1. The State of Maharashtra
2. Maheshkumar s/o Panditrao
Dhaigude,
Age 36 years, Occu. Agri.,
R/o Kale Galli, Latur
At present R/o Takali (Bk),
Taluka and District Latur

.. Respondents

Mr V.D. Sapkal and Mr S.S. Panale, Advocates for applicants
Mr V.M. Kagne, A.P.P. for respondent no.1
Mr V.B. Godbharle, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING
THE JUDGMENT : 6th September 2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 13th October 2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Accused nos.1 to 5 under Section 482 of Cr.P.C. seek quashing of F.I.R. at C.R. No.274/2016 registered at Latur Police Station against them under Sections 467, 468, 420, 471 read with sec.34 of Indian Penal Code. The second prayer is for quashing of order of Lakayukta dated 14.7.2016 on complaint filed before him by respondent no.2
2. Heard learned Advocate Mr V.D. Sapkal for the applicant, Mr V.M. Kagne, learned A.P.P. for State and Mr V.D. Godbharle, learned Advocate for respondent no.2
3. F.I.R. dated 7.8.2016 lodged by respondent no.2 Mahesh Dhaygude against the applicants is in respect of misappropriation of funds of a trust Vitthal-Rukhmini temple by the accused, who are trustees of the trust. There is also allegation regarding misrepresentation before the Joint Charity Commissioner that the temple is situated in Takli as well as Tandulwadi, when it is actually situated only in Takali. Incidentally, accused no.1 is Sarpanch of Tandulwadi and other members are also from Tandulwadi, who are wrongly shown as residents of Takali to get themselves appointed as trustees. The misappropriation alleged is one in respect of amount of Rs.5,99,062/- received on 2.7.2007 for construction of protection wall, which was shown to be constructed, but actually not constructed. The second is in respect of getting approval for construction of well and other construction during the period from 2005 to 2008. The funds received were not properly utilised and inferior quality of work of Nali and road was done and no gate was constructed, still the amount was received.

4. The application and arguments of learned Advocate Mr Sapkal disclose following grounds for quashing :

(I) Same allegations were made in application R.C.C. No. 481/2014 filed before Chief Judicial Magistrate, Latur under Section 156 (3) of Cr.P.C. In the said case, the learned Judicial Magistrate, First Class, Court No.3, Latur issued process only against accused no.1. Thus, this is analogous to second F.I.R. It is also claimed that respondent no.2 had made similar complaint to the Collector and after due enquiry by the Engineers of Zilla Parishad, report was submitted that the grants were sanctioned only after verifying the complaint of construction and the quality thereof.

(ii) It is argued that Lokayukta had no jurisdiction to entertain the complaint of respondent no.2 dated 11.6.2014 since the judicial proceeding was going on in respect of the same crime. Still Lokayukta took cognizance on 5.4.2016 and issued directions dated 14.7.2016. to the Police Officer A.P.I. Mr Bavkar to record detailed complaint of respondent no.2 and to take cognizance, if any cognizable offence was disclosed and register the offence. He was directed to make enquiry into the allegations. The applicants had applied for intervention but their application was rejected. Later, on 9.2.2017, in view of the registration of F.I.R. and the investigation in pursuance thereto, the Lokayukta took a decision that the village was not within the territorial jurisdiction of M.I.D.C. Police Station, Latur and investigation should be handed over to economic wing and he

was not going to take action under Section 10 (1) of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971.

(III) Mr Sapkal learned Advocate for applicant submitted that the Police were not inclined to take cognizance or register F.I.R., as there was no substance in the allegations. There was no order against accused no.2 to 5 passed by competent Court, still due to intervention by the Lokayukta, the F.I.R. came to be registered.

5. Learned Advocate Mr Godbharle for respondent no.2 referred to **Viswasrao Chudaman Patil vs Lok Ayukta, State Of Maharashtra, 1985, Mh.L.J. 54** and submitted that respondent no.2 has made allegations and not grievance and, therefore, bar of Section 8 (1) (b) of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 was not attracted. The applicants have no locus standi to challenge the action of the Lokayukta. He submitted that the present complaint is in respect of different allegations than those made in the earlier F.I.R.

6. The points for our consideration with our findings are as follows :

(I) Whether Lokayukta acted beyond his jurisdiction and whether his order dated 14.7.2016 deserves to be quashed? .. In the affirmative

- (II) Whether F.I.R. at C.R.No.274/2016 against the applicants is second F.I.R. or inherently improbable and deserves to be quashed ? .. Partly in the affirmative

- REASONS -

7. Point No.1 : In Viswasrao Chudaman Patil vs Lok Ayukta, State Of Maharashtra (cited supra), the scheme of Lokayukta is considered and the various provisions therein are interpreted. The powers of Lokayukta under Section 7 and the restrictions under Section 8 of the Act are also considered. In short, the Lokayukta gets jurisdiction when (I) there is complaint of grievance or the allegations against public servant; and (II) the Lokayukta forms opinion about existence of maladministration by public servant to initiate enquiry against any public servant. Bar of Section 8 (1) (b) reads as follows :

“8 (1) (b) If the complainant has or had any remedy by way of proceeding before any tribunal or court of law:

Provided that, the Lokayukta or an Upa-Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if the Lokayukta or, as the case may be, the Upa-Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.”

In Viswasrao Patil's case (cited supra), it is laid down that bar of Section 8 (1) (b) of the Act is applicable to only grievance and not to the allegations.

8. Since the Lokayukta has not been joined as a party, without making a deep probe into his powers, duties and restrictions, we hold that as per Section 8 (5) (b) of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 shall not investigate any complaint involving the allegations, if the complaint is made after the expiry of three years from the date on which the action complained against is alleged to have taken place. The only exception is when sufficient cause is made out for not making complaint within time, the Lokayukta shall investigate the allegations or grievance made against public servant. In the present case, accused nos.1 to 5 were trustees of a public trust. The main allegations are against them. There was no allegation against the Police as such. What is more material is that the allegations made by respondent no.2 related to a period of more than six years prior to the date of complaint. In view of this we find the Lokayukta had no jurisdiction to investigate into the allegations in respect of events, which took place more than three years back unless he, for reasons to be recorded in writing hold that the complainant had sufficient cause for not making complaint within time. In the present case, the complainant has nowhere stated so nor the learned Lokayukta has observed existence of such sufficient cause. On this ground alone, the Lokayukta should abstained himself from taking any cognizance or making investigation.

9. In **CH. Rama Rao Vs. Lokayukta and ors., (1996) 5 SCC 304**, it is laid down that when any complaint of maladministration is received, Lokayukta has right to hold preliminary verification before embarking upon the investigation. He has to form a prima facie

opinion that conduct of regular investigation was justified. Such preliminary verification has to be done in private and with due regard to confidentiality. Obviously, at this stage, the public servant against whom the complaint is made has no right to appear and make representation, but if Lokayukta decides to hold investigation, he is bound to give opportunity to the aggrieved person to comment on such complaint. Only after giving reasonable opportunity to the public servant, the Lokayukta can submit a report to the government.

10. Besides, in the matter like this, where the competent courts are established for providing redressal to the aggrieved party and such Court might have received any complaint and some orders might have passed, it is responsibility of the Lokayukta to make a proper preliminary verification and use judicial restraint so that there should not be conflicting orders.

11. We hold that taking of cognizance and issuing of directions by the Lokayukta in a case more than six to eight years old was contrary to the provisions of law and, therefore, the direction of Lokayukta dated 14.7.2016 deserve to be quashed.

12. On comparison of the impugned F.I.R. at C.R.No.274/2016 and earlier written complaint dated 23.5.2014 in the light of arguments advanced, we find that some allegations are common in both. In impugned F.I.R. the following allegations are made :

(I) The applicants who are residents of Tandulwadi have personated as residents of Takli and when Vitthal-Rukhmini temple is situated on land Gat No.188 and 189 from Mauje Takli, very much away from the border of Takli, the address is shown as situated at Tandulwadi and Takli and all the residents of Tandulwadi were taken up as trustees by producing false residence certificates of Takli.

(II) On 2.7.2007, construction of a protection wall from the funds of the government was shown and funds of Rs.5,99,062/- were received and appropriated when actually no such wall was constructed.

(III) The applicants got sanctioned construction of well and construction of other work in the temple premises. The construction of Dharmashala, road and drainage was of inferior quality. No gate was constructed, however, the funds received for such work were received by the applicants.

13. R.C.C. No.481/2014 filed before Chief Judicial Magistrate, Latur transferred to Judicial Magistrate, First Class Court no.3, Latur shows allegation no.I and allegation no.II against the same accused in respect of the same period. This complaint dated 25.7.2014 is not only prior in time but the learned Judicial Magistrate, First Class, Latur has taken cognizance of offence under Section 465 of Indian Penal Code against accused nos.1 and 6 only by order dated 22.1.2015. The complaint against applicants no.2 to 5 was dismissed. The said order has not been challenged. The present complaint in respect of the same allegations, which were taken in R.C.C.No.481/2014, is not

maintainable. It amounts to second F.I.R. In this regard, we rely on the judgment of **T.T. Antony Vs. State of Kerala, (2001) 6 SCC 181**, and **Amitbhai Anilchandra Shah Vs. CBI, (2013) 6 SCC 348**. As held in these cases, the fresh complaint in respect of not only the same allegations, but also other allegations, which arise out of the same transaction is also barred.

14. We find that the present impugned complaint dated 8.8.2016 makes fresh allegations in respect of receiving funds for construction of Dharmashala, road and drainage and not constructing the gate and Dharmashala and construction of inferior quality of nala and road. There is also reference to construction of a well. The investigation reveals that the well was sanctioned for construction in the temple premises, but it was constructed by accused no.1 in his own premises.

15. It is argued that the Engineers of Zilla Parishad had carried out verification and thereafter have submitted report in favour of the applications to the Collector. In this regard, we do not wish to enter into appreciation of disputed questions of facts. We make it clear that when complaint is filed before the Judicial Magistrate, he is sole Judge to consider the allegations against the accused and the report submitted by Zilla Parishad Engineers to the Collector will not be binding on him, but he may consider the same in the light of other facts.

16. We find that the allegation regarding inferior quality of construction of road, nali, non-construction of gate, non-construction

of well cannot be said to be an act committed in the course of same transaction. The work of construction of compound wall was undertaken by accused no.1, who was Sarpanch of Tandulwadi, whereas the work of construction of road, Nali and Samajik Sabhagrah was entrusted to Majoor Sahakari Society under different work orders. The acts of misappropriation, if any, cannot be said to be committed in the course of same transaction to the earlier misappropriation of Rs.5,99,060/- was alleged by non-construction of protection wall. Since it is independent offence, fresh F.I.R. was maintainable.

17. Though the F.I.R. was registered in view of the orders of Lokayukta, which we have found to be without jurisdiction, we find that the F.I.R. in respect of fresh allegations, as referred above, is not barred. The investigation reveals prima facie substance in the contention that money was received for construction of well in temple premises, but it was constructed somewhere else. It is, therefore, not appropriate to quash the F.I.R. in respect of the third allegation.

18. The investigation revealed that initially amount of Rs.15 lakhs was sanctioned for construction of Samajik Sabhagrah on the land of trust, but the persons, who donated the land raised dispute and the construction of Samajik Sabhagrah was not possible. Thereafter Additional Chief Executive Officer, Zilla Parishad, Latur sought permission and the Secretary, Village Development and Water Conservation Department, Mantralaya, Mumbai on 16.12.2008 granted permission for diverting the funds for construction of well, fitting pipeline and construction of water tank in the premises of

temple. The government has approved the said proposal on 18.2.2009. The 7/12 extract shows that the well was constructed in the field of accused no.1 Bhagwat and not in the premises of temple.

19. We, therefore, hold that the F.I.R. deserves to be partly quashed in respect of two allegations (I) regarding misappropriation of funds of Rs.5,99,062/- and other regarding forgery for formation of Trust with wrong address and getting the applicants of residents of Tandulwadi appointed by misrepresentation.

20. Thus, the criminal application is partly allowed. The impugned F.I.R. dated 8.8.2016 at C.R. No.274/2016 is quashed with regard to the allegations of misappropriation and other offence in respect of grants of Rs.5,99,062/- received for construction of compound wall and allegations regarding forgery for formation of trust with wrong addresses and getting appointment of trustees residents of Tandulwadi by making misrepresentation before the Joint Charity Commissioner and the other allegations.

21. The application is allowed in respect of prayer for quashing the order of Lokayukta dated 14.7.2016 passed on complaint of respondent no.2 - Maheshkumar Dhaygude bearing No.LA/COM/1163/2014 (T-3).

23. We clarify that the observations made herein on merits are prima facie in nature and are restricted for deciding the present application only.

22. Rule is partly made absolute. There shall be no order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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