

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

Criminal Application No.167 of 2008

- 1) Vinod s/o Haribhau Borade,
Age 40 years,
Occupation: President MC Sailu,
R/o Sailu.
- 2) Shivaji Govindrao Govindwar,
Age 42 years,
Occupation Service as Chief Officer
R/o Municipal Council, Sonpeth,
District Parbhani. **.. Applicants.**

Versus

- 1) Shivaji s/o Baburao Khedkar,
Age 35 years,
Occu: Agril & Business,
R/o Suraj Mohalla, Sailu,
District Parbhani.
- 2) State of Maharashtra
Through Police Station Officer,
Police Station, Sailu,
District Parbhani. **.. Respondents.**

Shri. Swapnil S. Rathi, Advocate, for applicants.

Shri. S.R. Choukidar, Advocate, for respondent No.1.

Mrs. D.S. Jape, Additional Public Prosecutor, for
respondent No.2.

With

Criminal Application No.187 of 2008

* Vijay s/o Jairam Tapdiya,
Age 32 years,
Occupation: Business,
R/o S.V.P. Road, Parbhani. .. **Applicant.**

Versus

- 1) Shivaji s/o Baburao Khedkar,
Age 35 years, Occu: Agril & Business,
R/o Suraj Mohalla, Sailu,
District Parbhani.
- 2) State of Maharashtra
Through Police Station Officer,
Police Station, Sailu,
District Parbhani. .. **Respondents.**

Shri. Swapnil S. Rathi, Advocate, for applicants.

Shri. S.R. Choukidar, Advocate, for respondent No.1.

Mrs. D.S. Jape, Additional Public Prosecutor, for
respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 6 AUGUST 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) Both the proceedings are filed for the relief of quashing of the order of investigation made by the learned Judicial Magistrate, First Class, Sailu in Proceeding No.37/2003 and for setting aside the decision given in

Criminal Revision No.71/2007 by Sessions Court Parbhani.
Both the sides are heard.

2) Proceeding was filed by present respondent No.2, a Councillor of Sailu Nagar Parishad, District Parbhani. Vinod Haribhau Borade, accused, was the President of the local body, the second accused was the Chief Officer of the local body and the third accused was a contractor to whom work of supply of bleaching powder was given by the local body. Allegations are made that to favour the contractor-Vijay Tapdiya, the Chief Officer and the President of the local body accepted his tender and gave him order of supply of bleaching powder at the rate of Rs.747/- per bag. It is contended that more than 150 bags were actually purchased at that rate when in open market the rate was hardly Rs.360/-. Other allegations made are that the contractor was not having separate sales tax number and he had created and used false record of sales tax number to get the contract.

3) After receipt of the private complaint, as per the record produced, the learned Judicial Magistrate first made order under section 200 of the Code of Criminal

Procedure of verification. Verification of the complainant was recorded. After that the learned Judicial Magistrate made order of investigation under section 156(3) of the Cr.P.C. against the contractor. The order was not made immediately as against the Chief Officer who was public servant and other accused who was the President, as he was also public servant. The order of the learned Judicial Magistrate was challenged by Vijay Tapdiya by filing revision. In the revision the Sessions Court held that the order of investigation was possible as against all the three accused and such direction was given in the revision by the Sessions Court.

4) Learned counsel for the applicants placed reliance on the observations made by this Court in the case reported as **2007(2) Bom.C.R. (Cri.) 570 (Transparent Energy Systems Pvt. Ltd. vs. Satyawati Chemicals)** and submitted that after making order under section 200 Cr.P.C. and after recording verification, the Magistrate cannot turn back and make order of investigation under section 156(3) of the Cr.P.C. This proposition cannot be disputed. The learned Magistrate

has passed such order in the present matter also. There is such technical flaw in the present matter.

5) The submissions made and the record show that the All India Institute of Local Self-Government has issued a circular dated 1-8-2002 and the local bodies are expected to purchase the material at the rate fixed by All India Institute of Local Self-Government. The said circular shows that for the year 2002-2003 rate of bleaching powder was fixed as per the grades. For the present matter the rate was fixed as Rs.360/- per bag. There is specific allegation that even in the open market the rate was not as high as is given to the contractor in the present matter. Such loss is caused many times by the persons like the present applicants. Such incident cannot be taken lightly. In the present matter even if the order made by the learned Judicial Magistrate and the F.I.R. is registered on the basis of said order are not possible as per procedural law, the entire proceeding cannot be dismissed. The learned Judicial Magistrate will have to consider the allegations and the Magistrate can proceed as provided under section 202 and other provisions of the

Cr.P.C. Further, the offence committed is cognizable in nature as section 420 and also section 409 IPC can be used in such a case and so it is possible to take cognizance of the matter by police if separate F.I.R. is received in that regard. Only due to this, this Court holds that the order of the Judicial Magistrate, the decision of the Sessions Court and the F.I.R., if any, registered need to be quashed. For that purpose following order :

6) Both the applications are allowed. The order made by the learned Judicial Magistrate under section 156(3) of the Code of Criminal Procedure and the decision given by the Sessions Court in Criminal Revision No.71 of 2007 are hereby quashed and set aside. The matter is remanded back to the Judicial Magistrate for dealing with the matter as provided in the Code of Criminal Procedure like using the provisions of section 202 etc. It is made clear that registration of F.I.R. given by others is not prevented due to aforesaid circumstances. Rule made absolute in those terms.

Sd/-
(K.L. WADANE, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)