

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 533 OF 2014

Uttam s/o. Karbhari Aher,
Age 54 years, Occu. Govt. Service,
R/o. Jet-1, PWD Parisar,
Padampura, Aurangabad.

....Applicant.

Versus

1. The State of Maharashtra
Through Police Inspector,
MIDC Police Station, Aurangabad.
2. Amitab Ramlaxman Sing,
Age 40 years, Occu. Business,
R/o. Plot No. 481, Sector-F, N-1,
CIDCO, Aurangabad.

....Respondents.

Mr. Yashodeep Deshmukh, Advocate for applicant.

Mrs. P.V. Diggikar, APP for respondent No. 1/State.

Mr. N.V. Gaware h/f. Mr. P.A. Pisal, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JULY 25, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 175/2013 registered in M.I.D.C. Police Station, Aurangabad for the offences punishable under sections 420, 120-B etc. of Indian Penal Code. Both the sides are heard.

2) The applicant was working as Superintending Engineer in Public Works Department (P.W.D.), Aurangabad in the month of August 2013. He had taken charge of the post on 16.8.2013. The Executive Engineer of this department had published tender notice on 6.8.2013 and the last date for filling tender was 12.8.2013. On 13.8.2013 some documents were to be submitted along with the earnest deposit money by the contractors.

3) The first informant Amitabh Sing is a contractor and he had filled tender in respect of aforesaid tender notice. The tender was filled by using online process as per the procedure prescribed. The first informant dispatched the copies of original papers, one demand draft of Rs.10,000/- and E.M.D. deposit of Rs.2,94,000/- and one affidavit typed on stamp paper through Blue Dart Express Courier on 12.8.2013 addressed to the Office of Executive Engineer. The courier informed on 13.8.2013 to the first informant that all his parcel was reached to the office of Executive Engineer. On 17.8.2013 when the first informant requested for the receipt from aforesaid courier, the courier handed over one receipt which was not bearing stamp or signature of Executive Engineer. Only the name was written as 'Patel' and mobile number was written on it. As there was no proper receipt, the first informant made more inquiry with Yogesh Lingayat, a courier boy, who had effected delivery and Yogesh informed that on that day, when he

had visited the office of Executive Engineer, one person from the office has virtually snatched the packet from him and the aforesaid receipt was given to him. He also informed that there was one man by name J.P. and he was distributing money at that place and he had attempted to give money to Yogesh also. On 20.8.2013 a man of Blue Dart Courier gave report about the incident to police.

4) On 26.8.2013 the first informant received E-mail from P.W.D. that his tender was rejected. Tender of Devgiri Infrastructure Private Limited was accepted. The reason for rejection was given as the original papers, E.M.D. and demand draft were not received in time. The first informant felt that staff members had snatched the packet from courier boy and they had taken care to see that the packet was not attached to his tender.

5) It is the allegation of the first informant that on 28.8.2013 when he went to the office to make more inquiry, threats were given to him that case will be filed against him under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. He made specific allegations against Clerk Jadhav, Bagul, Dandge and also against Executive Engineer Khade and Superintending Engineer Aher and some other staff members that they had joined hands to see that his tender was rejected and tender of Jaiprakash Nanaware, the

person controlling Devgiri Infrastructure was accepted. The F.I.R. was given on 18.11.2013.

6) The learned counsel for respondent, first informant and the learned APP submitted that when there was complaint of aforesaid nature against the members of staff of P.W.D., the Superintending Engineer ought not to have accepted the tender of Devgiri Infrastructure. It was also submitted that respondent had made specific complaint about the incident and in respect of modus operandi used by Devgiri Infrastructure and in view of that complaint also, the Superintending Engineer ought not to have accepted the tender. It was submitted that subsequently, the tender process itself was cancelled and this circumstance shows that the employer who was interested in getting the work done also suspected foul play. Some record was shown to this Court which is to the effect that when as per the procedure given by Central Government, there was no competition and only one tender was available, the tender process needs to be cancelled. It was submitted that such step was not taken by the present applicant and so, inference is possible against him that he was part of the conspiracy. It is not disputed that though there was such procedure of Central Government Departments, no such procedure was adopted by the State Government for P.W.D. Today a copy of Maharashtra Public Works Manual was produced to show that the

acceptance or rejection of the tender is actually discretion of the officer to whom duty is entrusted and no explanation can be taken of the officer because of rejection of any tender. It was submitted that there was nothing in the Manual to show that if there is single tender, fresh process needs to be started. It is not disputed that the State Government took a decision like Central Government subsequently and at the relevant time, there was no such condition or instruction from the State Government. In any case, the tender process itself was cancelled. The allegations made show that some incident did take place, but that incident took place in the office of Executive Engineer and the persons involved in that incident were from clerical staff. The applicant had not taken charge of the post on that day. On the basis of that incident, the prosecution wants to draw inference that there was a conspiracy and the applicant was part of the conspiracy. This Court holds that such inference is not possible on the basis of aforesaid circumstances as the procedure which was required to be followed at the relevant time was followed. This Court holds that it will be abuse of process of law if the present applicant is asked to face the trial for the aforesaid offences. In the result, the application is allowed to the extent of applicant. Relief is granted to him in terms of prayer clause 'C'. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]**[T.V. NALAWADE, J.]**

ssc/