

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 279 OF 2013

Mukesh S/o Krishna Bhoge,
Age : 33 Years, Occ. Government
Service, At present working as
Sub Divisional Officer, Vaijapur,
Tal. Vaijapur, Dist. Aurangabad
[At the relevant time was working as
Probationary Deputy Collector and
Tahsildar at Mukhed, Taluka Mukhed
District Nanded] R/o. Government
S.D.O. Quarter, Vaijapur Taluka
Vaijapur Dist. Aurangabad

.. PETITIONER

VERSUS

1] The State of Maharashtra,
through the Assistant Police
Inspector, Mukramabad
Police Station, Mukramabad,
Taluka Mukhed, District Nanded

2] Laxman S/o Lalsing Jadhav,
Age : 35 Years, Occu. Agricultural,
R/o. Village Jirga Tanda Taluka
Mukhed, District Nanded.

.. RESPONDENTS

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Shri. R.S. Deshmukh, Advocate for petitioner.

Shri. M.M. Nerlikar, A.P.P for respondent No.1

Shri. Abhijeet Choudhary, Advocate for respondent No.2

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WITH

CRIMINAL WRIT PETITION NO. 280 OF 2013

Mukesh S/o Krishna Bhoge,
Age : 33 Years, Occ. Government
Service, At present working as
Sub Divisional Officer, Vaijapur,
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[At the relevant time was working as
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Tahsildar at Mukhed, Taluka Mukhed
District Nanded] R/o. Government
S.D.O. Quarter, Vaijapur Taluka
Vaijapur Dist. Aurangabad

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
through the Assistant Police
Inspector, Mukramabad
Police Station, Mukramabad,
Taluka Mukhed, District Nanded
- 2] Arjun S/o Govindrao Rapanwad,
Age ; 35 Years, Occ. Not known
R/o. Mukhed, Taluka Mukhed,
District Nanded

.. RESPONDENTS

...

WITH

CRIMINAL WRIT PETITION NO. 282 OF 2013

Mukesh S/o Krishna Bhoge,
Age : 33 Years, Occ. Government
Service, At present working as
Sub Divisional Officer, Vaijapur,
Tal. Vaijapur, Dist. Aurangabad
[At the relevant time was working as
Probationary Deputy Collector and
Tahsildar at Mukhed, Taluka Mukhed
District Nanded] R/o. Government
S.D.O. Quarter, Vaijapur Taluka
Vaijapur Dist. Aurangabad

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
through the Assistant Police
Inspector, Mukhed Police Station,
Taluka Mukhed, District Nanded
- 2] The Police Inspector,
Local Crime Branch, Nanded,
Taluka and District Nanded
- 3] Shivaji S/o Shankarrao Gedewad,
Age : 30 Years, Occ. Social Worker,
R/o. Walmik Nagar, Mukhed, Taluka
Mukhed, District Nanded

.. RESPONDENTS

...

WITH**CRIMINAL WRIT PETITION NO. 322 OF 2013**

Mukesh S/o Krishna Bhoge,
Age : 33 Years, Occ. Government
Service, At present working as
Sub Divisional Officer, Vaijapur,
Tal. Vaijapur, Dist. Aurangabad
[At the relevant time was working as
Probationary Deputy Collector and
Tahsildar at Mukhed, Taluka Mukhed
District Nanded] R/o. Government
S.D.O. Quarter, Vaijapur Taluka
Vaijapur Dist. Aurangabad

.. PETITIONER**VERSUS**

- 1] The State of Maharashtra,
through the Assistant Police
Inspector, Mukhed Police Station,
Taluka Mukhed, District Nanded
- 2] Shravan S/o Govindrao Rapanwad,
Age : 40 Years, Occu. Social Work,
R/o. Mukhed Town, Taluka Mukhed,
District : Nanded

.. RESPONDENTS

WITH
CRIMINAL WRIT PETITION NO. 323 OF 2013

Mukesh S/o Krishna Bhoge,
Age : 33 Years, Occ. Government
Service, At present working as
Sub Divisional Officer, Vaijapur,
Tal. Vaijapur, Dist. Aurangabad
[At the relevant time was working as
Probationary Deputy Collector and
Tahsildar at Mukhed, Taluka Mukhed
District Nanded] R/o. Government
S.D.O. Quarter, Vaijapur Taluka
Vaijapur Dist. Aurangabad

.. PETITIONER

VERSUS

1] The State of Maharashtra,
through the Assistant Police
Inspector, Mukramabad
Tq. Mukhed District Nanded

2] Pravinkumar S/o Ramrao Gavane,
Age : 30 Years, Occu. Medical Practioner
R/o. Village Makani, Tq. Mukhed
District : Nanded

.. RESPONDENTS

....

Shri. R.S. Deshmukh, Advocate for petitioner.

Shri. M.M. Nerlikar, A.P.P for respondent No.1

Shri. A. B. Dhongade, Advocate for respondent No.2

Shri. Abhijeet Choudhary, Advocate for respondent no.2.

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Judgment reserved on : 30.11.2018

Judgment pronounced on : 05.12.2018

JUDGMENT(Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard
both the sides for final disposal.

2. All the proceedings are filed by the same petitioner, the Tahasildar of Tahsil Mukhed, District Nanded for the relief of quashing of different FIR's registered against him in Mukhed Police Station, District Nanded. In the first proceeding, the relief is claimed in respect of Crime No. 13/2013 registered on 07.02.2013. In the second proceeding, relief claimed is in respect of Crime No. 25/2013 registered on 25.02.2013. In the third proceeding, relief claimed is in respect of Crime No.7/2013 registered on 17.01.2013. In the fourth proceeding, relief is claimed in respect of Crime No. 30/2013 registered on 08.03.2013 and in last proceeding relief claimed is in respect of Crime No. 33/2013 registered on 20.03.2013.

3. Both the sides are heard.

4. In short, the facts of aforesaid different crimes can be stated as follows :-

WRIT PETITION NO. 323 OF 2013
(In Crime No. 33 of 2013)

This proceeding is in respect of Crime No. 33 of 2013 and the village involved is Makani, Tahsil Mukhed. The crime is registered on the basis of direction given by the learned Judicial Magistrate (F.C.), Mukhed in private complaint to make investigation under Section 156(3) of the Code of Criminal Procedure. The complainant Dr. Pravinkumar Gavane is a resident of village Makani,

Tahsil Mukhed. He has contended that while implementing and executing the work under the Maharashtra Rural Employment Guarantee Scheme, several irregularities were committed and the amount of around Rs. 3,00,00,000/- (Rupees Three Crores) has been misappropriated by the accused persons including the present petitioner. The work like Panand road, cement Nala Bandh, Canal repairs and removal of slit from public tank were shown to be executed under the scheme. The scheme was started for benefit of persons living in rural area and particularly for those areas which are drought affected to see that work is given to people of rural areas and the work is executed in the village or in Gavthan of the village so that people are not required to migrate to other places to work for livelihood. Under the scheme, the Government has promised to give the work of at least 100 days to each adult member of the family.

5. In C.R. No. 33 of 2013 allegations are made that no work was done and false record of work including the muster roles of labourers was created. The names of labourers who were not alive like Namdeo Sambhaji Kondare, Sambhaji Govind Kadam, Nivrutti Laxman Gawalwad, Laxman Vitthal Kamble, Shriram Pundlik Lokulwar, Sarubai Tulshiram Gawalwad are mentioned by the complainant to show that on the dates when they were shown as labourers they were not alive. Some names of children like

Dnanyeshwar Bandu Holangir who was aged about 10 years, and Muktabai Bandu Holangir, who was aged about 8 years and some names of handicapped and bed ridden persons like Shankar Gangaram Gawalwad, Raosaheb Motiram Gavane are also mentioned in the complaint to show that false record of labour force was created. The names of some persons who were in Government employment were also shown in the muster roles like Padminibai Raghunath More (Aganwadi Techer) Gangabai Baburao Rajure, (Aganwadi teacher), Shankar Chandu Gawalwad working in Mumbai Corporation, Bhimrao Ganpat Kamble and Surekha Bhimrao Kamble working in Ashram School. Their names were also shown in the muster roles according to the complainant.

6. The allegations of misappropriation are made against Sarpanch, Gram Sevak, Post Master, Rojgar Sevak, Tahsildar, Block Development Officer and Engineers of Zilla Parishad. The complainant has made allegations that almost all member of his family including Ranjeet Gavhane, Raosaheb Gavhane, Anusaya Gavhane, Chandrakala Uma Gavhane, were mentioned in the muster roles when they never worked under the scheme as there is no such necessity for them. Amount is shown to be paid to them and that amount is misappropriated by the accused.

7. Allegations of some different nature are also made to show that false record was created. It is contended that two or more job cards were created in respect of one household when there can be only one job card and for illustration, numbers are given as job card Nos. 240 and 246 which are in respect of the same household. The other illustration is of job card No. 18 and 245 and it is contended that double payments were made in the same names, for the same period, by creation of such double job cards.

8. Allegations are made against Sarpanch, Gram Sevak, Rojgar Sevak as they were to supervise the work allotted to the village Panchayat by Zilla Parishad. It is the village Panchayat who is expected to over see/ inspect the creation of the record as it has the first hand information. Allegations are made against the Tahsildar as he was expected to work as Programme Officer of the scheme for each village falling under his tahsil. Allegations are made against the Block Development Officer as he was expected to work as Joint Programme Officer. The allegations are made against engineers of Zilla Parishad as they were expected to consider the matter of technical sanction and they were expected to verify the record of measurement.

Writ Petition No. 322 of 2013
(In Crime No. 30/2013)

9. This proceeding is in respect of C.R. No. 30/2013 and the

village involved is Jambhali, Tahsil Mukhed. The Complainant Shravan Govindrao Rapanwad has contended that he is a social worker and he had come across similar irregularities. In this FIR following are specific allegations :-

(i) The same labour force was shown at different places for different works of the village on the same day and by creation of such record double amount was disbursed in the names of same labourers.

(ii) Labour force was not actually used for doing manual work but some work was done by using machines like J.C. B. and for that also false muster roles were created.

(iii) Some instances are given like the work of tree plantation and it is contended that more than 160 labours were shown on the muster role of the work shown to be executed at three places but the same names are appearing in the muster role. It is contended that for one work period of work was mentioned between 28.08.2009 and 04.09.2011 and by creation of false record it was done and when the work was actually done between 09.07.2008 and 15.07.2008. It is contended that between 09.07.2008 & 15.07.2008 those persons were shown to have worked at different sites. Some other instances of that kind are given.

(iv) It is contended that works which were given No. CB-3 and CNB-1/74/495 were executed during the similar period, but the names appearing on two musters of these two works show that the

same labour force was shown.

(v) It is contended that 235 labours were shown to be used for the work of Nala Bandh No.1-16/173 and LBS-2, but the said works were executed during the similar period from 1.5.2011 to 31.08.2012 and 1.5.2011 to 01.10.2011 and most of the labours are shown common for similar period. Muster role numbers are also given in this case to show the similarity. It is further contended that actually these works were not executed. Similar allegations are made in respect of works given No. LBS-50, work of slit removal, work No. CB-4-154-67 and it is contended that these three works were shown to be executed during the similar period like 7.6.2011 to 12.06.2011, 1.6.2011 to 31.08.2012 and 7.6.2011 to 12.06.2011 and labour force shown for similar period is common. In this case it is also contended that the work was actually not done and false record was created and amount was shown to be disbursed.

WRIT PETITION NO. 282 OF 2013
(In Crime No. 07/2013)

10. Writ Petition No. 282 of 2013 (C.R. No. 7/2013) is in respect of village Mandalapur. This Private complaint was filed by Shivaji Shankarrao Gedewad who is a social worker. He has made following specific allegations

(I) In village Mandalapur when as per the voter list the adult

persons are 1074, bogus job cards are shown to be prepared for 1294 persons.

(ii) The labour force shown to be used in Mandalapur was also shown as used at different places like Borgaon and LBS Mandlapur for the same period and amount was misappropriated.

(iii) It is contended that names of some employees who were working with local body or other institutions are appearing on the muster role and they were used to misappropriate money. The instances are given of Aanusayabai Shankar Kadamangale Job Card No. 86, who is working as Anganwadi Madatnis and it is contended that total amount of Rs. 7027 is shown to be disbursed in her favour as daily wages. Another employee of Anganwadi Sevika Laxmibai Devkate is shown to have received amount of Rs. 11,775/-. One Atmaram Laxmiman Gawalwad who was working as Gram Sevak was shown as labour for these works, and amount of Rs. 49,447/- is shown to be paid to him.

(iv) The complainant has contended that the record of false measurement in respect of work No. 13 C.C.T and Band of stones is created. It is contended that in fact when such portion of land is not available, the measurement is shown 50,000/- Kubic meter work and the amount of Rupees 76,00,000/- (rupees Seventy Six Lakh) is shown to be disbursed and in this way, misappropriation is done.

(v) It is contended that 13 persons shown on muster roll

were dead, but in their names the amount is shown to be disbursed and that amount is misappropriated.

CRIMINAL W. P. NO. 280-2013
(In Crime No. 25/2013)

11. Writ Petition No. 280 of 2013 in respect of village Tandali Taluka Mukhed District Nanded (C.R.No 25/2013). This private complaint is filed by Arjun Rapanwad who claimed to be a social worker. He has made allegations of following nature :-

(i) In respect of work bearing No. CCT-1, it is contended that false record of period of work is created. When the work was actually started on 26.04.2011, different period is shown and purpose was to use the labour force who was working at other place during the similar period. The labour force was of 140 labourers and the period of the work is falsely shown as 1.6.2009 to 2.7.2009.

(ii) Work of construction of stone is shown to be executed between 1.6.2009 and 4.4.2010, and during this period other two works were going on which were started from 1.6.2009 but the same labour force is shown to have been used. For illustration the names of some persons given like Dashrath Ganpati Gaikwad who is shown at three places for the same period and 1.6.2009 to 2.7.2009 like C.B. Tandali, C.C. Tandalli-1 and stone work. It is contended that in his name no account was opened in the bank or post office, but the

amount was shown to be disbursed and that amount is misappropriated. Similar allegations are made in respect of Vithoba Gaikwad, Parvati Ramrao Pawar, Bhimrao Pawar etc. It is contended that one Uttam Chavan was working in Ashram school but he is shown to have worked for 24 days and amount is shown to be disbursed.

WRIT PETITION NO. 279 OF 2013
(In Crime No. No. 13/2013)

12. Writ Petition No. 279 of 2013 is in respect of C.R. No. 13/2013 of village Jirga Taluka Mukhed. The private complaint was filed by one Laxman Jadhav, farmer. He has made following specific allegations

(I) When work was to be executed by using labour, by doing manual work, some work was done by using J.C.B. machinery and false record of manual work was created. It is contended that false record of work of Panad road is created.

(ii) It is contended that false record was created by using names of dead person like Varshabai Maroti Bajgire who was dead on 28.11.2010, but it is shown that she worked between 31.04.2012 to 6.5.2012 and also 16.4.2012 to 22.04.2012 at two different places. It is contended that one Afsar Ismail Sayyed is working in the Forest Department, but his name is shown in the muster role for the work of

tree plantation on both the sides of Jirga Manjari Phata road for a period between 23.7.2009 and 1.07.2011.

(iii) It is contended that false job cards were prepared and in respect the same of person two job cards were prepared like Aarsar Ali bearing Nos. 180 and 259 were prepared. Some illustration of other persons who are dead like Kondiba Bajgire are also given. Similarly, according to complainant, Tanyabai Rathod died on 07.12.2009, Shankar Rathod had died on 07.04.2012. Here it needs to be observed that the false record in respect of period, when the petitioner was working as Tahildar will be considered in the present matter and in respect of aforesaid two persons like Kondiba and Tarabai the record will not be considered.

(iv) It is contended by the complainant that the persons like Rupala Mansing Jadhav, Shankar Chavan, Afsar Ismail Sayyed were working in the Forest Department, but they were shown as labours on tree plantation work. It is contended that one Vinayak Rathod is working as a teacher at Udgir, but his name is shown as Labour. It is contended that Sumanbai Rathod was in service, but her name was shown as labour. It is contended that Uttam Jadhav never worked but amount is shown to be disbursed in his favour.

(v) Specific allegations are made that in the past under other projects prior to this work, done Thorwadi to Jirga to Tahwara Tanda road of the length of 4 K.M, was constructed, but this road was made

as Panand road under the present scheme and in this way, amount has been misappropriated. It is contended that no new road as per the record was constructed.

13. In all the crimes, allegations are made that all the accused had joined hands for creation of false record and for misappropriation of the Government money. Different kinds of *modus oprendies* are mentioned in the crimes and the record is there to show that during the period when the petitioner was working as Tahsildar at Mukhed, some of the work was executed. All the crimes are registered for the offences punishable under Sections 420, 419 and 409 and 463, 468 and 471 and Section 34 of the Indian Penal Code. Even penal Section 120-B of Indian Penal Code can be used in view of the nature of allegations and the record collected. All the Tahsildar who had worked during the relevant period and the persons like Gram Sevak, Block Development Officer's are made accused in the cases.

14. The main contentions of the petitioner are as follows :-

- (a) He was holding post of Tahsildar Mukhed for the period of only six months like 18.09.2009 to 16.03.2010 and most of the work executed under the scheme was executed beyond this period. It is contended that job cards were also not prepared during his tenure and disbursement of the amount

was also not made during his tenure.

- (b) That, he was not involved in preparation and implementation of project and only Block Development Officer (B.D.O.) was to supervise the execution of the work as work was to be executed by Village Panchayat and it was to be supervised by Zilla Parishad.

15. During the arguments, chart showing period appearing on muster role came to be produced by both the sides. All the papers of investigations were made available to this Court by the learned A.P.P and that record includes the job cards, lists of labour used, muster roles and administrative approvals for work.

16. The submissions made and record shows that in C.R. No. 13/2013 and 30/2013 in the past investigation agency had filed 'C' summery report and 'B' summery report respectively. Those reports are not accepted by the learned Judicial Magistrate (F.C.) and the learned Judicial Magistrate (F.C.) has directed investigating agency to make further investigation. Interim relief was granted by the learned single Judge of this Court in all these matters in the year 2013 and it was directed that no coercive action should be taken against the petitioner. At the relevant time, these matters were assigned to learned Single Judge of this Court. The submissions made show that

due to Interim order, proper investigation could not be made as against the present petitioner. It was submitted that the investigation officer has now got the correct idea about the role played by the Tahsildar and he is on proper line at present. Learned A.P.P submitted that in C.R. No.7 of 2013 charge sheet is filed as against the other accused, but due to aforesaid circumstances charge sheet is not filed against the petitioner, but the summery report was also not filed in his favour. Learned A.P.P submitted that C.R. No. 33/2013 and 25/2013 are still under investigation.

17. The tenure of the petitioner as Tahsildar of Mukhed was from 18.09.2009 to 16.03.2010. This Court has kept this tenure in mind for considering the allegations and also material collected by the police. The allegations involve preparation of bogus job cards including two or more job cards in respect of the same household, creation of job cards in the names of deceased person, creation of job cards in respect of persons who were employees in Government Service and other institutions due to which it was not possible to show them as labours in different muster rolls for different works, creation of bogus muster roles by showing the same labours for similar period at different sites, showing deceased persons in muster roles as labours and showing persons who are in Government service and other services as a labourer and disbursement of Government

money to them by showing that the work was executed by them. Most of the work was not actually executed by them but by using false record of labours, by creation of false measurement record by technical wing, it was made possible to disburse the amount. Learned counsel for the petitioner took this Court through various schemes like The National Rural Employment Guarantee Scheme, created in the name of Mahatma Gandhi, National Rural Employment Guarantee Scheme and various G.R's issued by the State Government like G.R dated 19.10.2006, 26.06.2009, 8.6.2010 and 17.5.2012. He took this Court through the provisions of the National Rural Employment Guarantee Act, 2005 and the guidelines prepared for Village Panchayats for implementation of 'MANREGA' and also through the contents of job cards which are according to learned A.P.P prepared for each household when application is moved for giving labour work under scheme.

18. This Court has carefully gone through the provision of aforesaid Act, the G.R's and also the hand book prepared for Village Panchayat. The Single judge of this Court who is Member of this Bench had an opportunity to go through all these provisions of the Act and the schemes and also the various G.R's issued by the State Government. Though this Court was deciding the proceeding like Anticipatory Bail Application, various provisions and directions are

considered by this Court in the case reported in 2014(2) Mh.L.J. (Cri) 97 (Ramesh Devrao Gutte and others Versus State of Maharashtra and Another) The observation can be found in para No. 4 to 14 and they are as under :-

"4. This Court has gone through the provisions of aforesaid three Acts, the Government resolutions, the Circulars and the correspondence made by the concern department of the Government with the Officers, who were implementing the scheme. The aforesaid Acts and the other record show that Maharashtra State Government had already started schemes for giving employment to unskilled labours from rural area. All such schemes were brought under one Act by the State under the Act of 1977. When National Rural Employment Guarantee Act 2005 (hereinafter referred to as the Central Act) was enacted, this State made amendment to aforesaid Act of 1977 to incorporate the provisions of Central Act. The amendment Act came to be called as Maharashtra Employment Guarantee (Amendment) Act, 2006. There are allegations against the applicants that after the year 2010 the amount was misappropriated by creating false record and so, it can be said that the provisions of either Central Act or the Amendment Act of 2006 needs to be considered.

5. Under section 6 of the Act of 1977, Collector was responsible for implementation of the scheme. He was expected to prepare project and he was also to take care of implementation of the scheme in his district. He was the implementing Officer for the district. For Panchayat Samiti Level, for implementation of the scheme, Samiti Officer was appointed under section 10 of the Act of 1977. It was provided that Samiti Officer shall not be below the rank of Tahsildar/B.D.O. Due to the amendment of year 2006, the

Collector came to be called as District Programme Officer" [Section 2(A)(III)]. Under the Amended Act, Samiti Officer is called as " Programme Officer"

6. Under the Act of 1977 [section 2(d)] Government Department and also Local Body like Gram Panchayat were implementing agency. Section 6-1B of Amended Act, 2006 shows that Gram Panchayat is still implementing agency for some works. Implementing agency is expected to maintain the accounts of employment and also the expenditure. The provision is made to see that funds are directly placed at the disposal of the implementing agency like Village Panchayat.

7. Section 7(3) of the Act of 1977 provided that the registration of names and addresses of persons, who wanted to take benefit of the scheme, was to be done at the head quarter of Gramsevak or Talathi within whose jurisdiction, the village where the person resided was situated. Section 8(1) of this Act provided that the Officer appointed for registration was to make inquiry as he deemed fit at the time of registration. This Officer was expected to send list of these names to Samiti Officer. After the registration, the persons, who are so enrolled were required to apply for getting work. Provision was made for giving power to Talathi Gramsevak and also Samiti Officer to receive such applications. Under section 10 of this Act, Samiti Officer was given power to direct such applicants to particular work, which was started under the Scheme. Section 6-1B(6)(7) of the amendment of the year 2006 provided that the Programme Officer was to supply the muster roles, list of works and Gram Panchayat was given power to allocate the work to such applicants. In view of section 6-1C (v) of Amended Act, it is the duty of the Gram Panchayat to register household

(in the past individuals were registered, but due to amendment, entire family is registered as household) after making inquiry as it deems fit. The Gram Panchayat is expected to issue job cards to the household which should bear photographs of the adult male members of the household. The job cards remain valid for the period of five years from the date of issue and they can be renewed after that. Under Amended Act, Gram Panchayat is given power to strike off name of household and take back job card. Under section 6(1)(v)(3), Programme Officer has also power to receive applications for allotting work. Under section 6 (vii) of Amended Act, Officers like B.D.O need to be appointed as Programme Officer at Panchayat Samiti level to supervise the work undertaken at Panchayat Samiti level including the work of Village Panchayat.

8. Section 6 (viii) (2 to 5) of Amended Act shows that Programme Officer is to assist the Panchayat Samiti. He needs to prepare plan of work for Block (Block consist of 10 villages). He is expected to monitor projects of Gram Panchayat within his Block. He is to sanction the payment of unemployment allowance. He is to ensure the payment of wages to labours from his Block. He is to ensure local audit of the work through Gram-Sabha etc. The Programme Officer (B.D.O.) can take help of Assistant Programme Officer. It appears that Assistant Programme Officer were used from the service people of Zilla Parishad or Revenue Department.

9. Clause 3 of (viii)(c) given under section 16-1A, 16-1B (v)(8) of Amended Act 2006 shows that the person to whom work is provided must be informed by writing letter on the address given in the job card about the allotment of work. Public notice of it is also

required to be affixed in the office of Gram Panchayat and the office of Programme Officer. Gram Panchayat is expected to supply information of households registered to Programme Officer.

10. The Government resolution dated 5.6.2010, 8.6.2010 and Circular dated 28.09.2010 of the State Government show that the Government did decentralization of the work of technical sanction and administrative sanction in respect of work undertaken under the Central Act. The power of administrative sanction in respect of the implementing agency (Gram Panchayat) is given to B.D.O. and the power of administrative sanction in respect of other work (done through department which is called as a line work) is given to Tahsildar. Though there are such provisions, the present matters show that it is the Tahsildar who exercised administrative power for according administrative sanction.

11. In respect of work which is to be executed by Gram Panchayat, the Engineer of that division of Zilla Parishad is expected to give technical sanction. For other work for which Tahsildar is expected to accord administrative sanction, for line work, the Tahsildar was expected to use the man power of the State Government from the concerned technical department. However, under the provisions, the Committee of Tahsildar, B.D.O and Deputy Engineer or Technical Officer appointed for division was expected to supervise the technical side of the work executed through Gram Panchayat also. Thus, under the provisions, Tahsildar continues to work for the schemes implemented through the Local Body like Gram Panchayat. The Circular dated

16.12.2010 shows that four technical pannels came to be created for assistance and supervision of work to be executed through Local Bodies like Gram Panchayat. They are expected to work under B.D.O As already observed, Tahsildar continued to keep administrative control and so, it can be said that it is the Tahsildar, who kept control over these pannels also. Under the aforesaid provisions, it is provided that 50% of the work of the scheme is to be got done through Local Bodies like Gram Panchayat and the remaining work is to be done through Government department called as line section or line agency (Circular dated 28.9.2010). Circular dated 14.3.2011 shows that B.D.O was to get funds for the work to be executed through the Gram Panchayat. The Circular dated 4.3.2011 shows that Gram Panchayat can do the work of Panand road and plant trees etc. This work can also be done by line agency. The correspondence shows that arrangement is made to see that most of the works can be done through Local Bodies and also through line agency. Letter dated 29.03.2011 gives list of more works which can be done by Gram Panchayat. Letter dated 4.3.2011 shows that payments to labour should be made either in the account opened in bank or in post office.

12. The letter dated 12.5.2011 gives procedure for making payment of wages to labours. It also shows that Gram Sevak, Gram Rojgar Sevak, Gram Panchayat Sarpanch and B.D.O are involved in the process of preparation of bills in respect of wages of labour. It is the B.D.O who is expected to be sanctioning authority and the authority certifying the muster roll. However, the present matters show that the previous procedure was continued and the Tahsildar was given control of the implementation. Gram Rojgar Sevak

needs to be appointed by Gram Panchayat and he works under Gram Sevak and Gram Panchayat.

13. Letter dated 16.12.2010 of department of Government shows that for giving assistance and for supervision of the work which is done through Local Bodies like Gram Panchayat, four kinds of Technical Officers need to be used. They are as under :-

- (i) Civil Engineer (Diploma Holder)
- (ii) Agricultural engineer (Degree Holder),
- (iii) Agricultural Officer (Degree Holder in Agriculture) and
- (iv) Degree Holder from Forestry (If such person is not available, then Degree Holder of Agriculture is to be used).

It can be said that as per the nature of work to be executed aforesaid technical experts were to participate in the implementation of the scheme. In the present matters, when the work involved of soil conservation or water conservation, the Agricultural Officer of the Zilla Parishad came to be used.

14. A list of duties of Circle Agricultural Officer, Tahsil Agricultural Officer and Assistant Agricultural Officer was shown to this Court. The duty list shows that they need to be involved when the work of soil conservation and water conservation etc. is undertaken under the aforesaid schemes. These Officers are expected to maintain and supervise the work of measurement, muster roll, labour register etc. The Agricultural Assistant is expected to mark attendance of labours. Even Circle Agricultural Officer is expected to remain present personally at least on 12

incidents of distribution of wages to be made by subordinates."

19. The record of present matter shows that for present work Tahsildar was the Programme Officer and Block Development Officer was joint Programme Officer. A copy of administrative approval given in respect of brook of ground leveling (Nala Saralikaran) of this village dated 26.06.2009 is produced and in that record the Tahsildar is mentioned as Programme officer. Thus for relevant period, during his tenure, the Tahsildar was Programme officer of Tahsil Mukhed and he was presiding over committee created at Tahsil office. In view of this factual aspect, it cannot be said that the present petitioner was not involved in the works in respect of which there are allegations made in all the crimes.

20. Coming to the record available in all aforesaid crimes it can be said that to substantiate the allegations made in F.I.R there is more than sufficient material in the police papers. It needs to be mentioned here that protection was given to this petitioner by this Court against any coercive action and due to that it is contended that effective investigation could not be made. However, there is huge materials in the form of statements and records showing that there is substance in the allegations made in all the crimes. Material is as under :-

21. In C.R. No. 25/13 there are statements of persons like Vishwamber Gaikwad, Dashrath Ganpati Gaikwad, Uttam Kashiram Chavan, Bhimrao Kashiram Pawar, Vitthal Nivrutti Shirsath, Jyotiram Kashiram Pawar and others to the effect that false record of payment of wages was created by using their names. They have given statements that they did not work under the scheme, so there was no question of getting any amount under scheme by them. There is record like muster role showing that Vishwamber was shown as a labour for the period 1.6.2009 to 16.6.2009 at two places of work of Tandali like 65 and 178. There is record of making of payments in respect of aforesaid persons. This record is in respect of disbursement made in the year 2009 to 2010 to Vishwamber Gaikwad of Rs. 7865/-. There is similar record in respect of the Dashrath Gaikwad, Balaji Pawar etc. There is list of labours dated 14.10.2009 in respect of stone bandh(LBS) that contains the names of some of aforesaid persons like Bhimrao Pawar, Dashrath Gaikwad, Jyotiram Pawar and others.

Record is collected by police to show that Uttam Chavan was working in Zilla Parishad Primary School Tandali Tanda at the relevant time. This man is shown as labour in muster role.

22. In C.R. No. 33/2013, there is statement of Ranjeet Gavane showing that from the year 2009 to 2012 most of the

members of his family were shown as labours for different work of Makani like work T.C. M. No. 2/2, 2/3 C.C.T work No. 1891-42, cement Nala Bandh work No. CB-3, work of creating trench and the value of the work was more than rupees 3,06,000/- (Rs. Three lakhs Six thousand). All the members of family of Ranjeet Gavhane were shown as workers and amount were shown to be paid to them. There is similar statement of one Prakash More. There is record of payment shown to be made to the members of family of Ranjeet Gavhane for the period 16.11.2009 to 30.11.2009.

In C.R. No. 33/13, there is statement of Laxman Gawalwar showing that though his father was dead the record of labour work was created in his name and payments were shown to be made to his deceased father for the period 16.11.2009 to 30.11.2009.

In C.R. No. 33/2013, there is record of post office to show that the Accounts were opened in respect of father of Laxman Gawalwad, the members of a family of Ranjit Gavhane and others and payments were shown to be made through these accounts to those persons. The amount of more than Rs. 2.5 Lakhs was shown to be paid to the members of family of Ranjit Gavhane

23. In C.R. No. 7/13, there is record like statement of Shaikh Rabbani showing that he never worked under the scheme and the record was created in his name for period of 16.11.2009 to 30.11.09

in respect of trench work, which is false. The amount of Rs. 3875/- is shown to be paid to him. There are similar statements of Shaikh Babu in respect of other period. There are statements of Pandurang Gawalwad in respect of period 1.9.2009 to 16.09.2009 and Shankar Mundkar in respect of period 16.11.09 to 30.11.2009.

The record of administrative approval dated 31.12.2009 in respect of work CCT-1-1 etc is shown to be seized in the paper of investigation. CCT 1-2 1/3, 1/4 OF Mandlapur is also shown to be seized. Record of job cards prepared in respect of aforesaid Rabbani is shown to be taken over as Rabbani had never applied for such job card.

In C.R. No.7/13, there is record showing that one Atmaram Gawalwad who was Gram Rojgar Sevak was shown as labour and amount of Rs. 9700/- was shown to be paid to him in respect of period 01.10.2009 to 16.10.2009.

24. It is already observed that previous investigation officer had not considered the circumstance that Tahsildar was Programme Officer at the relevant time and so he had filed summery report in two crimes in favour of present petitioner. Those summery reports are rejected and there is order to make further investigation by the Magistrate. Like in other matters mentioned above record of C.R. No. 30/13 and 13/13 can be considered against the present petitioner

in respect of the relevant period.

25. In view of nature of duties of petitioner and as he was head Programme Officer, he cannot be allowed to say at this stage that he was not aware of creation of aforesaid false record and misappropriation of amount which is shown to be disbursed to the persons, who never worked under the scheme. There are serious allegations in some cases that no work at all was done, but the amount is shown to be spent. There are allegations with regard to measurement also and though measurement ought not to have been accepted considering the situation mentioned already. In such cases thorough investigation needs to be made and Court needs to allow investigating agency to reach to logical end. At this stage such crimes cannot be quashed and set-aside. In paragraph No. 23 of the case of Ramesh cited (supra), effect of such offences on the development of rural area is mentioned. The portion is hereby repeated to show the effect of such criminal activity on the society.

"It is unfortunate that scheme meant for upliftment of poor persons from rural area and the schemes meant for overall development of rural area are not implemented as per expectation. It is unfortunate that the officers who are expected to discharge their duties honestly are creating false record of implementation and they are virtually defeating the objects behind the schemes. The entire nation suffers due to the conduct of such persons. These

days more and more funds are given for Local Bodies and the person like Sarpanch, Gram Sevak etc. are expected to use the funds properly. This is required for decentralization of power under any democratic system. Due to the conduct of persons like applicants the policy makers hesitate in giving powers directly to Gram Panchayats. In view of these circumstances and the record, this Court holds that in such cases, no lenient view can be taken and no concession can be given to anybody. Such economic offences need to be dealt with firmly and at every stage. Custodial interrogation is a must in such cases. Only after custodial interrogation, more material can be collected and more similar instances can be detected. So all the applications stand rejected. "

26. In view of the aforesaid discussion, this Court holds that no relief can be granted to the petitioner. In the result all the petitions stand dismissed. Rule is discharged. Interim relief is vacated.

27. It is made clear that observations made in this matter are limited for the purpose of decision of these matters.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE