

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 346 OF 2018

Dr. Ramprasad Madhavlal Porwal,
Age : 66 years, Occu. : Medical
Practitioner,
R/o Balaji Mandir Road, Partur,
Tq. Partur, Dist. Jalna.
And Councilor of Municipal Council,
Partur. ...Appellant

Versus

- 1] State of Maharashtra
- 2] Sureshkumar Kanhaiyyalal Jethliya,
Age : 65 years, Occu. : Business &
Politics,
Ex. President of Municipal Council
Partur,
R/o mondha Partur, Dist. Jalna.
- 3] P. R. Bijamwar, (Retired Chief
Officer)
Age : 72 years, Occu. : Retired,
R/o Near Octroi Naka, Near Railway
Station,
Umari Post. Umari Tal. Umari, Dist.
Nanded.
- 4] Kailas Jagtap,
Age : 56 years, Occu. : Service,
Nagar Parishad Partur,
Dist. Jalna.
- 5] Superintendent of Police,
Anti Corruption Bureau, Aurangabad. ...Respondents

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Party-in-person – Appellant.
Mr. A. B. Girase, P. P. for Respondent-State.
Mr. S. S. Thombre, Advocate for Respondent.

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WITH
CRIMINAL APPEAL NO. 347 OF 2018
[WITH CRIMINAL APPLICATION NO. 3615 of 2018]

Dr. Ramprasad Madhavlal Porwal,
Age : 66 years, Occu. : Medical
Practitioner,
R/o Balaji Mandir Road, Partur,
Tq. Partur, Dist. Jalna.
And Councilor of Municipal Council,
Partur. ...Appellant

Versus

- 1] State of Maharashtra
- 2] Sunand Digambar Shahane,
Ex. President of Municipal Council
Partur,
R/o Railway Station Road, Partur.
- 3] Alka Udhav Khaire,
Ex. Chief Officer, Municipal Council
Partur.
- 4] Santosh Trimbakrao Murkute,
(Contractor)
Madhav Bag, Jalalpur Road, Parali,
Dist. Beed.
- 5] Vijay Vyankatrao Munde, (Contractor)
Madhav bag, Jalalpur Road, Parali,
Dist. Beed.
- 6] Kailas Jagtap, (Engineer)
Municipal Council, Partur,
- 7] Gajendra Pandurang Nirmal
- 8] Sow. Sheetal Gajendra Nirmal
- 9] Arvind Govind Deshpande

- 10] Sow. Shashiprabha Arvind Deshpande,
Address of Sr. No. 7 to 10 is
Nirmal Ageneses Rathod Len, Gadge
Nagar,
Amrawati, Dist. Amrawati.
- 11] The Superintendent of Police,
Anti Corruption Bureau, Aurangabad. ...Respondents

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Party-in-person – Appellant.
Mr. A. B. Girase, P. P. for Respondent Nos. 2, 3, 6
to 11.
Mr. S. S. Thombre, Advocate for Respondent Nos. 3,
4, 5, 9, 10.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

RESERVED ON : 07-12-2018.

PRONOUNCED ON : 10-12-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Both these appeals have been filed under Articles 226 and 227 of Constitution of India as well as Section 482 of Cr. P. C. challenging the order passed by the Special Judge, Jalna in Special Case (P. C. A.) No. 7 of 2016 dated 16.4.2018 rejecting the application Exh. 21 given by the present appellant.

02. Present appellant has filed private complaint before Special Judge against the respondent Nos. 2, 3 and 4 contending that they have committed offence punishable under Sections 5, 7, 12, 13(1)(c)(d), 1(2)(ii) and 23 of

Prevention of Corruption Act and Section 165(c), 161 and 162 of Indian Penal Code. Original accused No. 1-present respondent No. 2 was the then President of Municipal Council, Partur, Dist. Jalna. Accused No. 2-present respondent No. 2 was the then Chief Officer of Municipal Council, Partur. Original accused No. 3-present respondent No. 4 was then working as Engineer with the Municipal Council. It has been contended that by conspiring accused No. 1 and 2 had given advance of Rs. 1,83,132/- to accused No. 3 in complaint bearing No. Special Case (P. C. A.) 7 of 2016 and the another complaint is filed challenging the order of rejection of application Exh. 21 passed in Special Case (P. C. A.) No. 42 of 2016. It has been filed against the then President of the Municipal Corporation, Chief Executive Officer, Construction Company and the Engineer. It has been contended that there is corruption to the extent of Rs. 2,27,41,379/-.

03. In both the complaints process has been issued against accused persons for the offences punishable under Section 13(1)(c)(d)(ii) of Prevention of Corruption Act only against the respective accused persons.

04. In both the complaints, the present applicant

filed application at Exh. 21 stating that all the accused persons have been released on bail. All the accused persons have misappropriated or taken the respective amount by way of corrupt practice. The said amount belongs to people / Govt. and therefore, it is necessary to ask the accused persons to deposit the same. He filed those applications under Section 4(1) of Criminal Law Amendment Ordinance, 1944 and Section 12(1) Schedule, Section 2 (Page No. 9, 10), 4(a) of the said ordinance. Both the applications were heard by the learned Special Judge and they have been rejected. Hence, present appeal.

05. Heard the appellant-party in person. The learned P. P. Mr. A. B. Girase and Learned Advocate Mr. S. S. Thombre for respondent No. 2 to 4. in first petition and Respondent No. 3, 4 and 5, and 9 and 10 and respondent No. 2, 6, 8 and 11 were served. They did not remain present. The party in person has vehemently submitted that the Criminal Law Amendment Ordinance, 1944 makes a specific provision in respect of attachment of property. The said provision is made with a view that there should be recovery of public money. The accused persons in collusion with each other had made the corruption. The report of the Auditor specifically says and had even issued the direction that the said amount should be

recovered from the accused persons alongwith interest @ 18% per annum. No action of recovery of the said amount is initiated against the accused persons. The accused persons though made corruption are now enjoying the said property. He has placed on record two pages of audit report. It will not be out of place to mention here that after taking circulation. He produced the audit report. Heard the party in person again. The said audit report supports his contention that said amount is recoverable from the accused persons and such directions are infact given by District Administrative Officer, Town Development Branch on 11.11.2016 to Chief Officer, Municipal Council, Partur.

06. The learned P. P. has made submission that the application is not tenable in the eye of Law as any such application was not moved before the concerned Court by either State Govt. or Central Govt. He supported the reasons given by the learned Special Judge. The learned Advocate appearing for the respondents also submitted that the specific Section was perused by the learned Special Judge. What was filed before the the learned Special Judge was the private complaint. The Criminal Law Amendment Ordinance, 1944 does not give any concession to the private person to ask for an attachment of the

property of the accused. The affidavit in second proceeding shows that 90% of the work of underground sewage was completed. The independent agency can be appointed to see whether the work is got executed or not. There was no corruption in the transaction. After the production of the audit report, the learned Advocate for the other respondents was also heard. He submitted that in the affidavit-in-reply all these factors have been explained. In fact, earlier there was no administrative sanction and therefore, it is stated that misappropriation or corruption, however, later on sanction have been accorded and accordingly, work has been done. Therefore, there is no question of recovery from the respondents.

07. We are firstly required to see whether the application Exh. 21 in both the proceedings was tenable in the eye of Law or not. Though the application was given under Section 4 which deals with ad-interim attachment, we are required to consider the provisions of Section 3 of the said act which deals with application for attachment of property. The said Section is reproduced for the sake of convenience :

Section 3 : *Application for attachment of property – (1) Where the [State Government or, as the case may be, the Central Government] has*

reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government], may whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be the Central Government] believes the said person to have produced by means, of the offence, or if such money or property cannot for any reason be attached, of other property of the said person or value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds, on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish,-

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of only other persons believed to have or to be likely to claim, any interest or title in the property of the said persons.

Thus, it is clear from the abovesaid provision that the such application for attachment of property can be given by the State Govt. or the Central Govt. as the case may be. Though a private complaint is permissible alleging that the accused has committed offence under the Prevention of Corruption Act, yet, Section 3 of the Criminal Law Amendment Ordinance, 1944 does not give any power to a private person to move Court for attachment of property. The right is given only to State Govt. or Central Govt. as the case may be. Further, it can be seen that such application can be made whether the Court has taken cognizance of the offence or not. Further, under the ordinance, the application can be for attachment of money or other property. That means, the details of the money, source thereof i.e. where the money is kept by the accused or where his property lies all those particulars are necessary to be given in the application itself. Sub

Section 3 of Section 3 makes attachment of affidavits alongwith the application mandatory stating the grounds on which the belief that the said person has committed any offence should be given. In this case, there is absolutely no compliance of the requirements of Section 3. Apart from the fact that such application can not be filed by a private person. When application under Section 3 itself is not maintainable which does not give right to a private person to file such application, the question of ad-interim attachment does not arise. The learned Special Judge has rightly interpreted the right and scope of Section 3 and therefore, rightly rejected the application. The audit report might be stating that such amount is to be recovered, that does not mean that the appellant has any right to ask for recovery of the said amount by taking recourse under Section 3 or 4 of Criminal Law Amendment Ordinance, 1944. No case is made out to interfere in the order given by the learned Special Judge.

08. At this stage, we do not want to go into the aspect as to whether the amount is recoverable from the accused or not the finality to the audit report and its interpretation whether the work was done or not and what is the effect of ex-post facto sanction would be the subject matter of the trial. However, taking into

consideration the powers to the State under Section 3 of the Criminal Law Amendment Ordinance, 1944 and observations can be made that if at all the State comes to the conclusion that any action is required, then the State is at liberty to adopt the proper procedure

09. For the above said reasons, both the appeals alongwith application are dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-