

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

CRIMINAL APPLICATION NO. 1396 OF 2018

Atul s/o. Raghunathrao Sakhare,
Age 57 years, Occu. Service,
R/o. C/o. Chief Engineer,
P.W. Region, Pune, Central Building,
Opp. G.P.O., Pune.

....Applicant.

Versus

1. The State of Maharashtra,
Through Kranti Chowk Police Station,
Aurangabad.
2. Nawab Mohd. Yusufuddin Khan s/o.
Nawab Mohd. Wajihuddin Khan,
Age 69 years, Occu. Business,
R/o. Madina Colony, Jahanuma,
Hyderabad (A.P.).

....Respondents.

Mr. Milind M. Joshi, Advocate for applicant.

Mr. S.B. Pulkundwar, APP for respondent No. 1/State.

Mr. Rahul G. Joshi, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 34 OF 2017

Anant s/o. Shrinivasrao Vaidya,
Age 59 years, Occu. Pensioner,
R/o. N-9, K-39/8, Pawan Nagar,
Hudco, Aurangabad.

....Applicant.

Versus

1. The State of Maharashtra,
Through Kranti Chowk Police Station,
Aurangabad.

2. Nawab Mohd. Yusufuddin Khan s/o.
Nawab Mohd. Wajihuddin Khan,
Age 69 years, Occu. Business,
R/o. Madina Colony, Jahanuma,
Hyderabad (A.P.).
Through G.P.A. Holder
Mr. Rafik Ahmed s/o. Mohd. Osman,
R/o. House No. 4-3-118, Vishwas Nagar,
Labour Colony, Aurangabad.

....Respondents.

Mr. Milind M. Joshi, Advocate for applicant.

Mr. S.B. Pulkundwar, APP for respondent No. 1/State.

Mr. Rahul G. Joshi, Advocate for respondent No. 2.

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

DATED : JUNE 25, 2018.

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

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

2) Both the proceedings are filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) for relief of quashing of F.I.R. No. 767/2016 dated 10.8.2016 registered with Kranti Chowk Police Station, Aurangabad for the offences punishable under sections 420, 193, 199, 167, 120-B, 34 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short).

3) The crime is registered on the basis of report given by one Nawab Mohammad Yusufuddin Khan. He has made allegations

against the present applicants, who were working as Sub Divisional Engineer and Clerk, respectively, in Public Works Department (PWD). Allegations are to the effect that in Writ Petition No. 5515/2008, which was filed by Prabhakar Tayade and others against the State of Maharashtra and others, an affidavit containing false information was filed for the department by the present applicants. It is his contention that he is the owner of land which was shown to be involved in Writ Petition, but affidavit was filed to show that the Government had purchased, acquired this land.

4) This Court has carefully gone through the record. The affidavit was not filed by the Clerk. The affidavit was to the effect that the construction which was there right from existence of Hyderabad State was taken over by the Government in the year 1960. The contention was, however, made that for building the structure which was to be used as common pool quarters for Government employees, the amount of Rs.5.59 lakh was paid by the Government to concerned department. The petitioners of the said proceeding had come to this Court for seeking direction that they should be given benefit of the scheme of the Government under which the Government was giving ownership right to the occupants of such premises. This Court did not accept that contention. It was held that they were common pool quarters and common pool

quarters made for the Government employees cannot be given to the persons like petitioners on the ground that in the past, they were occupying the quarters as Government servants and they were from the weaker sections of the society. They were in the employment of the Government in the past. Thus, only to answer the aforesaid contention of the petitioners in the said petition, reply affidavit was filed by the department. Only the aforesaid contention was considered and this Court held that the petitioners of that matter were not entitled to relief claimed.

5) The record shows that the grievance of the first informant is that nothing is paid to him in respect of the land which the Government has been using. Even a suit for injunction was filed to prevent the Government from creating third party interest in the property. The correspondence shows that the first informant is trying to see that he gets compensation and property is with Government. He was not party in aforesaid Writ Petition and so, it cannot be said that the affidavit was against his interest.

6) The affidavit was filed in Writ Petition before this Court and so, the provision of section 195 of Cr.P.C. is applicable. At the most, filing of such affidavit will fall under sections 193 to 196 of IPC and in such a case, complaint needs to be given in writing by the

Court or by the Officer of the Court and on the basis of such complaint, Court can take cognizance of such offence. For this reason also, this Court holds that relief of quashing of F.I.R. needs to be given. In the result, both the applications are allowed. The aforesaid F.I.R. registered with Kranti Chowk Police Station, Aurangabad is hereby quashed and set aside. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/