

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

CRIMINAL WRIT PETITION NO. 1022 OF 2010

1. Jeewan Namderao Sonawane,
Age: 51 years, Occu : Service,
R/o : Ayukta Niwas, Chruch Road, Camp,
Malegaon, Dist. Nashik.

2. Prashant Sharadrao Khandkekar,
Age: 40 years, Occu: Service,
R/o CEO, Quarters, Main Road,
Khamgaon, Dist. Buldhana.

Petitioners
... (Orig. Accused)

VERSUS

1. The State of Maharashtra,
through Police Station Officer, Kadim
Police Station, Jalna, Dist. Jalna.

(Copy to be served on Public Prosecutor,
High Court, Aurangabad)

2. Mehboobkha Wajedkha
Age: 70 years, Occu : Business,
R/o : Malipura, Near Jama Masjid, Kadim,
Jalna, Tq. & Dist. Jalna.

... Respondents

Mr. Mohit S. Shah h/f Mr. Shailesh P. Brahme for the Petitioners.

Mr. R. V. Dasalkar, APP for Respondent No. 1 – State.

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

DATE: : 3rd July, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.
2. We have heard learned counsel Mr. Mohit S. Shah h/f Mr. Shailesh P. Brahme for the Petitioners, learned APP, Mr. R. V. Dasalkar for Respondent No.1 – State.
3. The Petitioners have challenged the first information report bearing Crime No. 9/2008 registered against them for the offences punishable under Section 406, 409, 415, 420 read with Section 34 of the Indian Penal Code, registered at the instance of Respondent No.2 and the proceeding bearing RCC No. 493/2008 is pending before Chief Judicial Magistrate, Jalna.
4. The respondent No. 2 herein, lodged a complaint alleging that he was running his shop in shop No. 4, in Gandhi Chaman, Juna Jalna, since 21.10.1980. On 25.05.2004, Nagar Parishad, Jalna informed to the respondent No. 2 that the reconstruction of the shopping complex is to be carried out and after completion of the construction new shops will be allotted to the old tenants and the tenants have to deposit an amount of Rs.50,000/-.

Accordingly, the respondent no. 2 deposited an amount of Rs.25,000/- towards shop No. 4, however, in spite of the assurance, the Municipal Council and the petitioners have not given the possession of the shop in the aforesaid complex and possession of the same was handed over to some other persons therefore, the present petitioners have committed the offence of cheating.

5. The learned counsel appearing for the petitioners submits that the petitioner No. 1 was working as a Chief Officer, Jalna Municipal Council during the period from 12.04.2005 to 16.06.2007 and the petitioner No. 2 was working as a Chief Officer of the Municipal Council, Jalna from the period of 11.07.2007 to 29.04.2008. According to the petitioners, the Municipal Council has passed a resolution on 27.05.2002 for reconstruction of a shopping complex of Municipal Council.

6. The main grounds on which the first information report and the criminal proceeding are sought to be challenged are that the respondent No.2 had not obtained a prior permission under Section 197 of Cr. P. C., since both the petitioners were public servants at the relevant time. Secondly, they have no concerned with the resolution which was passed much prior to the services of the petitioners with Jalna Municipal Council and thirdly, the complaint is premature as the shops from the shopping complex are not yet allotted to anybody. In support of the contentions of the learned counsel for

the petitioners, the copy of the resolution is placed on record so also the information obtained by the petitioner No.1 under the Right to Information Act, is placed on record from which, it appears that this information was supplied by the Information Officer dated 16.10.2010 and as per the information, the shops in the shopping center were not allotted to anybody. So basically, the contention of complainant that the shops which is to be allotted to the complainant was already allotted to somebody, appears to be false. Furthermore, the copy of the resolution is placed on record it is dated 27.05.2002 at that time the petitioner Nos. 1 and 2 were not in the service of the Municipal Council. Therefore, they are not in any way related to the said resolution nor they are concerned with the allotment of the shops in the shopping complex, since the shops are still to be allotted to the persons interested. Therefore, on this aspect also, the complaint of the complainant appears to be premature and it is absolutely irrelevant against the petitioners. Furthermore, it appears that the respondent No. 2 had not obtained the prior permission to prosecute the petitioners they being public servant.

7. In view of the above, it is not clear from the record, how the present petitioners were concerned with the resolution which was taken by the Municipal Council way-back in the year 2002. Furthermore, the shops from the aforesaid complex were not allotted to anybody till 2010, therefore, grievance of the respondent No. 2 in the year 2008 particularly at the time of

the filling of the complaint/FIR appears to be without any base and premature.

8. In view of the above, the first information report and the criminal proceeding initiated against the petitioners needs to be quashed and set aside.

9. Therefore, the petition is allowed.

10. Relief is granted in terms of prayer clauses (C) and (D) only to the extent of present petitioners.

11. Rule is made absolute in above terms.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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