

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.46 of 2018

Shivkumar Rajdharprasad Sharma

vs.

State of Maharashtra, through Police Station Tirora, District Gondia

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.W. Sambre, Advocate for the Applicant.
Shri V.P. Gangane, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 20th MARCH, 2018.

Heard.

Although it is stated that this applicant falsely showed the works done under the drinking water scheme as complete, even when they were incomplete, the learned A.P.P. could not show to me as to in what terms those works were incomplete. Of course, he submitted that there was no electric supply provided for operationalizing these works and even before the electrification was complete, this applicant recommended that the fourth installment of the bills of the contractor should be paid to him. However, an enquiry was conducted by the Zilla Parishad previously. A copy of the report of the committee is forming part of the paper-book of this application. On going through this report, it is seen that in the enquiry conducted by the Zilla Parishad, it has been found that no irregularity has been committed in operationalizing the various projects completed under the drinking water scheme, as the electric connections were already in place.

The learned A.P.P. has also submitted that according to the conditions prescribed in the Government Resolution, the fourth installment was not to be paid, unless a period of one year expired after completion of the scheme and in the present case, even before expiry of such period of one year that this applicant made a recommendation for payment of the forth installment of the bills to the contractor. At this juncture, the learned Counsel for the applicant invited my attention to a condition mentioned in the tender document to submit that this condition requires that the fourth installment was to be paid not after one year, but only three months after the completion of the project and this condition, the learned Counsel for the applicant further submits, has been complied with in the present case.

There is indeed a condition in the tender notice of passing of period of just three months and not one year after completion of the work in the tender document, about which there is no dispute. This condition has not been shown to be violated by the prosecution. Even though the Government Resolution prescribed this period to be of one year, it seems to have been modified while issuing tender notice by the authorities of the Zilla Parishad and what will prevail presently will not be the conditions of the Government Resolution, but the conditions of the tender documents, which have been found to be complied with in the present case by the contractor.

It is also the case of the applicant that he was holding the charge of the post of Executive Engineer and as such it was his job to only verify the bills submitted to him by the Junior Engineer along with his recommendations and all that this applicant has done in the present case, was the

verification of such bills and arriving at his satisfaction that those bills were completely in order. He submits that the applicant's duty did not extend to actually taking the measurements of the work and that duty was to be performed by the Junior Engineer.

The prosecution case on this aspect of the matter, that is duty of taking measurements, is not clear. It is not known as to whose duty was it to take the measurements of the completed work. But having regard to the position held by the applicant, it can be reasonably presumed that the job of taking of actual measurements would not be performed by him and it would be got performed by the applicant through some junior level engineers. Therefore, on this count also, I do not think that any criminality at this stage could be attached to what the applicant has done in the present case.

In the result, I am inclined to allow this application and it is allowed accordingly.

The interim anticipatory bail granted to the applicant by this Court on 23/01/2018 is hereby confirmed on the same conditions with the modification of condition regarding his attendance at the police station and now it is directed that the applicant shall attend the police station only when he is required to do so by the Investigating Officer.

The application is disposed of accordingly.

JUDGE