

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2060 OF 2019

Sanjay s/o. Manikrao Muley,
Age: 38 yrs, Occu. Agril.,
R/o. Tamlur, Tq: Deglur,
Dist. Nanded.

... APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Police Station Degloor,
Tq: Degloor, Dist: Nanded.

2) Venkatraman s/o. Laxmanrao Dugamwar,
Age: 36 yrs., Occu. Service as a Talathi,
R/o. Sangavi Umar,
Tq. Degloor, Dist. Nanded.

... RESPONDENTS

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Mr. P. B. Rakhunde, Advocate for Applicant.

Mrs. D. S. Jape, APP for Respondent No.1 / State.

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CORAM : T. V. NALAWADE &
S. M. GAVHANE, JJ.

DATE : 07th November, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The proceeding is filed for relief of quashing of FIR No.236 of 2019, registered with Degloor Police Station, District Nanded, for the offences punishable under Sections 379 and 341 of the Indian Penal Code.

3 FIR is given by one Venkatraman Dugamwar, Talathi of Sangavi Umar, Tahsil Degloor, District Nanded. He has contended that on 12th June, 2019, he and Sub-Divisional Officer of Revenue Department, Degloor had gone to the bed of river of Tamlur in the night time. He has contended that when they were returning from the river, they noticed that there was one tractor of red color alongwith trailer and there was sand in the trailer. It is contended that there was nobody to attend the trailer and tractor and so the Sub-Divisional Officer directed to take the tractor in custody and so the staff took the trailer and tractor towards the village. In the village Tamlur, they realized that the tractor was belonging to present Applicant, Sanjay Muley. The tractor and trailer were not having number plates. It is contended that when they were proceeding ahead, Sanjay Muley intercepted the tractor and he took away the tractor. As per the direction given by the Sub-Divisional Officer, Talathi gave report and crime came to be registered.

4 The papers of investigation show that the tractor and trailer were never traced. Crime was registered in June 2019 and it can be said that only the Talathi and some revenue officers are making allegations against the Applicant of aforesaid nature. In ordinary course, one person could not have taken away the tractor and trailer by taking it from the possession of so many persons, who were with the Talathi. Even if it was taken over, with the help of police, they could have taken the possession of the tractor and trailer, but that did not happen. Thus, the allegations show that there is improbability and the allegations show that there is possibility of concoction. The submissions made by the learned APP that the revenue officers need to be believed, cannot be accepted as nothing is there on record to show that the theft of sand was committed or unaccounted sand was recovered in this matter on the basis of allegations made by the Talathi or other staff.

5 On the other hand, the learned counsel for Applicant submitted that the Applicant is a whistle-blower and he has been giving complaints against the contractors and revenue officers that they were committing theft of sand from the river bed of Tamlur and the revenue officers were collecting money through the contractor.

Allegations were made in the complaint dated 9th April, 2019 that proper supervision needs to be done when the sand is removed from the river bed to ascertain that the sand was extracted as per the permission. A photocopy of complaint dated 9th April, 2019 shows that it was received by Tahsil Office, Degloor. There is another copy of complaint dated 26th April, 2019 of similar nature. In the complaint dated 17th May, 2019, addressed to Divisional Commissioner, Aurangabad, the present Applicant had informed that Marathwada Building Material Supplier, a concern owned by Nagendra Tulshiram Hanmantkar of Sangavi Umar was excavating the sand by using JCB machine and the officers like Talathi, Circle Officer, Tahsildar and Naib Tahsildar had joined hands with him. He had requested to take action against the contractor as it was causing harm to the environment. He had requested to take over the site from which theft of sand was taking place. He had given measurement of the excavated site to show the huge quantity of sand already collected. This complaint was signed by Sanjay Manikrao Muley and Siddi Sajid Siddi Mukhtar. There is a copy of complaint made to Sub-Divisional Officer also showing that there was illegal excavation of 150 brass of sand, which was apparently theft and the offence was committed at village Shevala, Tahsil Degloor. A complaint was received from Sanjay Muley and the District Collector had given direction to Sub-Divisional Officer

to make inquiry.

6 The aforesaid record shows that prior to the date of FIR i.e. prior to 13th June, 2019, many complaints were given by the present Applicant against the contractor and revenue officers that they were illegally excavating the sand. The learned counsel for Applicant submitted that due to these complaints made by the Applicant, a false FIR is given against him.

7 This Court has already mentioned the material, which can be produced before the Court, if the case is filed against the Applicant for the offence of theft of sand. There are aforesaid circumstances against the same revenue officers. Such instances are increasing and illegal excavation of sand is going on. The learned APP submitted that action was taken against the aforesaid contractor and penalty of more than rupees one crore was imposed. The submissions also show that the said order is challenged by the contractor and stay is granted to the said order. These circumstances are sufficient to infer that the Applicant was whistle-blower and the report is given against him but it shows that there will be no material except the versions of the revenue officers against him to make out the case against him. Due to these circumstances and to see that

protection is given to the whistle-blowers, this Court holds that relief needs to be granted. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. Rule is made absolute in those terms.

[S. M. GAVHANE, J.]

[T. V. NALAWADE, J.]

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