

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

CRIMINAL APPLICATION NO. 2733 OF 2018

1. Sandip S/o Sudhakar Rao Udgirkar,
Age:45 Years, Occu.- Business,
R/o.: H.No.1-11-367, Deep Nagar,
Purna Road, Nanded.
2. Vyankatrao S/o Vasudeorao Deshpande
Age:45 Years, Occ.-Agri,
R/o.: Barhali Tq. Mukhed,
District – Nanded.
3. Smt. Saherabi W/o Sarwar Tamboli,
Age:42 Years, Occ.- Household,
R/o.: Barhali, Tq. Mukhed,
District – Nanded.

... **Applicants**

Versus

1. State of Maharashtra
2. Prakash S/o Ganpatrao Jogdand,
Age 55 years, Occ. Service,
R/o.: Water Supply Department,
Zilla Parishad, Nanded.

... **Respondents**

.....

Mr. N.S. Ghanekar, Advocate for the Applicants.
Mr. S.B. Joshi, A.P.P. for respondent no.1-State.
Mr. R.K. Ingole, Advocate for Respondent No.2.

.....

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**
DATE : 27.03.2019

JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondent. At the request of both the sides the matter is heard finally at the stage of admission.

2. The applicants are seeking quashment of Crime No.55 of 2017 registered with Mukramabad Police Station, District Nanded for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. The F.I.R. has been lodged by the respondent no.2 who is the Sub Divisional Engineer of Water Supply Department of Zilla Parishad, Sub Division, Mukhed. It is to the effect that the work for execution of water supply scheme of village Barhali was allotted to the applicant no.1 who is manager of Shobha Construction Company. The applicant no.2 was the Chairman of Water Supply and Sanitation Committee of village panchayat and the applicant no.3 was the Secretary of that Committee. According to the set practice whenever such a scheme is approved and the grants are received from Zilla Parishad, the cheques have to be deposited in the account of Village Panchayat and from that account the money is to be transmitted to the account of the Committee. It is thereafter, depending upon the assessment of the work a contractor is disbursed the money. Accordingly by following such a practice three installments were remitted. However in respect of the cheque

regarding the fourth installment for an amount of Rs.94,72,552/-, instead of crediting the cheque in the account of the village panchayat the cheque was straightaway deposited in the account of the Committee and was paid to the applicant no.1-contractor and thereby the applicants have cheated the Zilla Parishad and the Village Panchayat.

4. The learned advocate for the applicants vehemently submits that going by the F.I.R. it is not the allegation that the applicant no.1 or the contractor had not performed the work or had performed the work of some inferior quality. Therefore assuming that the cheque which ought to have been routed through the account of the Village Panchayat was directly credited in the account of the Committee, no element of dishonesty or fraud can be attributed to the applicants. There was no inducement to anybody and no one has gained anything pursuant to the disbursement of money. In the absence of such allegations and material, merely because there is some irregularity in making the payment by a different route, no offence can *prima facie* be said to have been committed. He would point out that there are no allegations about any misappropriation or forgery. In the absence of which, it would be a misuse of the process if the applicants are made to face the investigation and the crime may be quashed.

5. The learned A.P.P. submits that the investigation is still going on

and therefore no inference should be drawn either way at this juncture. By referring to the cheque and the statement of the account he would submit that the cheque was deposited in the account of Committee instead of depositing it in the account of the Village Panchayat. He points out that the Government Resolution dated 23.09.2008 to show that as per the guidelines laid down by the State Government in respect of disbursement of grants to the Zilla Parishad for implementing *inter alia* water supply schemes the money has to be deposited by the Zilla Parishad in the account of the Village Panchayat and it is thereafter to be transmitted in the account of the Committee concerned. Therefore *prima facie*, there is substance in the allegation about the applicants having indulged in some irregularities which certainly smack of deceit and the application may be rejected.

6. Indeed, there is no dispute that the applicant no.1 is the manager of Shobha Constructions which was allotted the work of setting up water supply scheme for the village Barhali. There is no dispute that the applicant no.2 was heading the Committee and the applicant no.3 was the secretary of that Committee. Going by the Government Resolution dated 23.09.2008, it is also quite apparent that the State Government has laid down a set procedure for routing the money to be paid to the contractors while implementing *inter alia* water supply schemes of Village Panchayat. It lays down that funds are to be first credited in the account of Village Panchayat and it is only thereafter

that it is to be transmitted in the account of the Committee concerned which in turn is expected to pay off the contractors. It is equally true that the cheque in question was directly deposited in the account of the Committee. Therefore there is no manner of doubt that such routing of money is not in accordance with the expected norms.

7. However the matter does not end here. Over and above, it is expected of the respondents to point out as to how, going by the allegations, the applicants can be said to have committed the offence of cheating as defined under Section 420 of the Indian Penal Code. There is no allegation about there being any dishonest or fraudulent intention on the part of the applicants. There is absolutely no allegation about they having deceived anybody in routing the money in the manner alleged. As can be seen there are no allegations that the applicant no.1 or the contractor of Shobha Constructions have not discharged the work undertaken by it or that the quality of the work was of some inferior nature. Precisely, there are no allegations about any misappropriation of government money. If this be so, in our considered view no ingredient for constituting the offence of cheating can be discerned even if the allegations in the F.I.R. are believed to be true. The case, therefore is squarely covered by Category 1 and 3 in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.**; AIR 1992 SUPREME COURT 604.

8. The application is allowed. The rule is made absolute in terms of prayer clause 'B'.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]

KAKADE