

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 188 OF 2018

1. Shivaji Sudam Dagade,
Age : 40 Years, Occ. Service,
R/o. Meharabad, Arangaon,
Ahmednagar, Dist. Ahmednagar
2. Kashinath Sudam Dagade,
Age : 47 Years, Occ. Agrilcutre,
R/o. Meharabad, Arangaon,
Ahmednagar, dist. Ahmednagar
3. Latabai Shivaji Jadhav,
Age : 47 Years, Occ. Agriculture,
R/o. Gate No. 1338/1, Prayankangari,
Nagar Road, Vaishali Haveli, Pune
4. Dineschandra R. Agrwal,
Infrocon Pvt. Ltd. Company
Through General Power of Attorney Holder,
Rajesh Joshi,
Age : 49 Years, Occ. Service
R/o. Agrawal Complex,
Nr. Lion Hall, Dessa Tal. Dessa,
Dist. Banaskantha,
Coroporate Office at 401, The Grand Mall,
S.M. Road, Ambawadi,
Ahmedabad. ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Police Inspector,
Belwadi Police Station, Ahmednagar
Dist. Ahmednagar
2. Seema W/o Rajendra Zende,
Age : 47 Years, Occ. Agriculture and
Household,
R/o. Chikhali, Tq. Shrigonda,
Dist. Ahmednagar. ..RESPONDENTS

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Advocate for the Petitioners : Mr. V.P. Latange
A.P.P for Respondent-State : Mr. R.V. Dasalkar
Advocate for Respondent No.2 : Mr. Ashwin V. Hon

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CORAM :T.V. NALWADE AND
M. G. SEWLIKAR,JJ.
DATE : 03.02.2020.

JUDGMENT(PER T.V. NALWADE, JJ) :-

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. 142 of 2017 registered with Belwadi Police Station, District Ahmednagar for the offences punishable under Sections 420, 467, 468 read with Section 34 of the Indian Penal Code. The FIR was given by respondent No.2 Smt. Seema who is Sarpanch of village Chikkhali Tq. Shrigonda, District Ahmednagar. It is her contentions that the present petitioners who are representing petitioner No.4 company have created false record of no objection certificate of her village Panchayat and by using false record they obtained Non Agricultural order in respect of one agricultural land. It is her contention that there was no application received from the company for getting no objection certificate and no such certificate was issued by her or Gram Sevak but such record was created by

the petitioners for using the same before the authority for obtaining permission to use the agricultural land for non agricultural purpose.

3. The submissions made show that petitioner company was doing work of construction of road a National High Way which is passing by the side of the village Chikkhali. The Company has taken land Gut No. 438/3 of this village on lease for camping the labour and for keeping some materials of construction. As this land is to be used for non agricultural purpose, application was moved for Non Agricultural conversion of this land by the owners like Kashinath Dagade and Shivaji Dagde. It was informed that this company was to use the land for non agricultural purpose. The authority, Sub Divisional Officer Shrigonda-Parner Sub Division of Ahmednagar district gave permission on 16.08.2017. Record is produced to show that applications were made to electricity board for getting supply of the electricity and all the permissions were obtained for using this land for non agricultural purpose. The report came to be given on 04.11.2017 i.e. much after getting non agricultural permission when it is allegations that for obtaining the non agricultural permission forged document like no objection certificate was

given by the village panchayat was used. This submissions made show that after use of land for non agricultural purpose the village panchayat passed resolution on 25.01.2019 and asked the company to pay the assessment of Rs. 1.2 lakhs per annum. In the record produced there is correspondence of Dy. Sarpanch and members of the village Panchayat showing that they had requested to this company to expedite the aforesaid work and also do some other work for the convenience of the village Panchayat. They had requested by letter dated 28.02.2019 to see that the approach road was connected to main road i.e. the high way. They had requested the company to give cement pipes 15 to 20 numbers which the village panchayat wanted to use under a old bridge of the village. This record shows that at least afterward good relations were established by the village Panchayat with this company and the village panchayat started collecting assessment also from this company. In view of these circumstances, it can be said that there was permission of the village panchayat for making construction over this space.

4. The learned counsel for the petitioner placed reliance on the G.R dated 22.01.2016 of the State Government, issued by the revenue and forest department. This G.R shows that

government had removed the restrictions like taking no objections from various authorities, in view of the difficulties which the petitioners were facing for getting non agricultural use-order. It was made clear that the authorities were only to consider the levy of the charges for non agricultural purpose and for conversion of agricultural land to non agricultural purpose, 7/12 extract was to be seen and the possession was to be confirmed. The revenue office and Talathi office were only to be consulted and only one thing was to be ascertained that the person who was to use the land for non agricultural purpose was ready to deposit the charges for non agricultural use.

5. Even if the aforesaid G.R is ignored, in view of the facts of the present matter it can be said that no loss is caused to anybody including village panchayat by the aforesaid document. Owner must have applied for conversion of the land to non agricultural purpose as there is one agreement in favour of the present petitioners, which was notarized for allowing them to use the land and no registered document as such was executed for giving land on lease as per Transfer of Property Act. Due to all these circumstances, this Court holds that it is not desirable to allow the prosecution of the present petitioners for the aforesaid offences. In the result, following

order :-

ORDER

1. The petition is allowed.
2. Relief is granted to them in terms of prayer clause 'B'.
3. Rule made absolute in those terms.

(M.G.SEWLIKAR, J.)

(T.V. NALAWADE, J.)

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