

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

CRIMINAL WRIT PETITION NO.1319 OF 2017

Kundan Dattatrya Dhake,
Age: 54 Years, Occu: Business,
R/O Shidhivinayak Sky Scraper,
Plot no.: 225, 229, Jai Ganesh vision
Near Inox Multiplex, Accurdi,
Tal & Dist: Pune- 422035.

... PETITIONER

VERSUS

1. The State of Maharashtra
Through Jalgaon Taluka Police Station,
Tal & Dist : Jalgaon.
2. Mahendra S/o Atamaram Sonawane,
Age : 42 Years, Occu : Agriculture,
R/O Mumrabad, Tal & Dist : Jalgaon.

(Orig. Complainant)
... RESPONDENTS

...
Mrs. Rashmi S. Kulkarni, Advocate for Petitioner.
Mr. R. D. Sanap, APP for Respondent/State.
...

CORAM : **T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

RESERVED ON : 21st October, 2020.

PRONOUNCED ON : 03rd November, 2020.

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

. The petition is filed for relief of quashing and setting aside

the order of investigation made under Section 156(3) of the Code of Criminal Procedure by the Judicial Magistrate First Class, Jalgaon in Criminal Application No.1026 of 2016. This proceeding was filed by present Respondent No.2 and he had prayed for making order of investigation for offences punishable under Sections 406, 420, 120-B etc. of the Indian Penal Code and few Sections of the Prevention of Corruption Act. It appears that initially the officers of technical wing, Engineers of Zilla Parishad were also made accused, but when the Court made query as to how investigation can be ordered when there was no sanction as required under the Prevention of Corruption Act, the complainant deleted those officers to see that he gets some order. This Court is making observations with regard to the officers of Zilla Parishad, who are shown to be deleted from the complaint and the power of police to make investigation against them also at proper place.

2 Both the sides are heard.

3 Respondent No.2, original complainant is a resident of village Mumrabad, Tahsil and District Jalgaon. The submissions made and record show that the Central Government had prepared a policy to see that the schemes are prepared for villages for supplying drinking water to the villagers. The schemes were to be started under the

name Rashtriya Gramin Peyajal Yojana. The schemes for the villagers are required to be implemented through Zilla Parishad. For implementation of the scheme at village level, committees are required to be created and they consist mainly of the Chairman, who is office bearer of Panchayat and Secretary, who is also office bearer of Village Panchayat. Such committee is called as Village Water Supply and Sanitation Committee. Accused Nos.1 and 2 were the office bearers of the committee during the initial period and Accused Nos.3 and 4 were office bearers of the committee during subsequent period. The present petitioner, contractor is shown as Accused No.6 in the private complaint.

4 The submissions made and the record show that the aforesaid committee published tender notice on 20th February, 2012 in one evening newspaper by name Saimat. Here only it needs to be mentioned that this newspaper is not heard of, it has no sufficient circulation. It is the contention of the original complainant that no publicity was given to tender notice and copy of the tender notice was not displayed even in the office of Village Panchayat. The value of the work involved in the present matter was more than rupees 1.34 crore. The State Government and the Central Government were to contribute for implementation of the scheme. The work, which was given to the present petitioner, contractor involved the construction of water supply

scheme, which was to contain laying slotted pipe, construction of gallery distribution tank, desilting of jack well to increase intake capacity of jack well, connect jack well to filter media etc. When as per the newspaper, the tender notice was published on 20th February, 2012, the work was allotted to the petitioner on 22nd March, 2012. It is contended by the complainant that there was no notice to other contractors and so there was no competition.

5 It is the contention of the petitioner that he started the work, he completed around 60% of the work, but he left the work on 7th March, 2013. It is his contention that he had other work and as he was heavily burdened with the work, he left the present work. It is the contention of the petitioner that the aforesaid committee accepted his desire to leave work and then measurement was done and accordingly bill was prepared. It is contended that already the amount of rupees 62.29 lakh was paid to him and as per the bill he was entitled to get rupees 66.47 lakh. It is contended that the cheque of remaining amount of rupees 4.17 lakh was issued to him, but he was asked not to encash it until there was permission of Zilla Parishad. It is his contention that as yet Zilla Parishad has not given permission and so he has not encashed the cheque.

6 It is the case of the petitioner that the remaining work was allotted to another contractor and irregularities were noticed in the work done by another contractor and not in the work done by him. It is contended that the Executive Engineer of Water Supply had made inquiry and he had found that even officers of Zilla Parishad were involved in the fraud. Thus, it is not disputed that inquiry was made and fraud was detected. It is also admitted that the Chief Executive Officer of Zilla Parishad had given direction to give report to police though it was to be given against the members of aforesaid committee. It appears that the Chief Officer had also not specifically permitted to give report against the two engineers, who were mentioned as accused in the private complaint. It is already observed that the original complainant was interested to set the law in motion and to remove obstacle of absence of sanction, he deleted the two engineers from the proceeding. This circumstance cannot make any difference and that cannot help the two engineers as investigating agency has every power to find out as to who is involved in the offence and take action against them also. They may, however, follow the procedure given under the Prevention of Corruption Act.

7 It is the contention of the petitioner that in Criminal Writ Petition No.515 of 2017, this Court quashed the FIR to the extent of one petitioner by observing that the said petitioner had no role in the

matter. It is contended by the present petitioner that he has also no role in the mater and there was no grievance in respect of his work.

8 This Court has carefully gone through the contents of private complaint. It is not disputed that Accused Nos.1 to 4 were office bearers of the committee. It is not disputed that the irregularities were noticed and there was material to form opinion that it was a case of fraud. In the present matter, the circumstances are such that *prima-facie* inference is easy that peculiar *modus-operandi* was used to see that the work is allotted to the petitioner. The petitioner withdrew major chunk of the amount without actual executing the work though he created a show like supply of pipes and then he left the work. Such *modus-operandi* are being used increasingly in these days. Blame is put on others by such contractors and they make easy money.

9 The submissions made and allegations show that the amount shown to be spent is more than rupees 1.43 crore but as per the valuation, the value of the work actually done is not even rupees one crore. The contentions and submissions show that the work of slotted pipe gallery was not completed but amount of rupees 22.83 lakh was shown to be spent on this work. This work was initial work, which was to be executed by the petitioner. It is contended that the distance between Nandra and Mamurabad is only 6000 meters, but it

is falsely shown as 6800 meters and by using that *modus-operandi* the amount in respect of work and pipeline is misappropriated. It is contended that when new pipes and pipes of good quality were to be used, old and low quality pipes were used and by that the amount of rupees 87.36 lakh is misappropriated. It is contended that the work of desilting of jack well was not done, but it was shown to be done and the amount was misappropriated. These were the works of the petitioner.

10 It is the further contention of the complainant that, even at present, whatever work is shown to be done is not of quality and water supplied is also not suitable for drinking purpose. It is contended that purification system is not in its place and so the water contains many harmful minerals in large quantity. It is contended that many villagers including he are suffering from kidney stone due to such water.

11 It is the contention of the complainant that when on 6th October, 2016 after making inquiry the Chief Executive Officer, Zilla Parishad had given order to lodge FIR, no such report was given to police. It is contended that due to such approach of Zilla Parishad, he was required to file private complaint. The private complaint was filed on 27th December, 2016. The submissions made show that as on today, no separate FIR is given by Zilla Parishad. This circumstance

speaks loud about the approach of Zilla Parishad. This creates probability that the Zilla Parishad is interested in protecting its officers.

12 By order dated 16th November, 2017, this Court had given interim relief in favour of the petitioner. Direction was given not to file charge-sheet against the petitioner though it was open to make investigation. The submissions made and report of police dated 7th December, 2017 show that the investigation was hampered. Most of the accused including the present petitioner were absconding as on 7th December, 2017. Their applications filed for anticipatory bail were rejected by the Sessions Court and even by this Court. It can be said that due to some misconception the present petitioner was not arrested may be due to aforesaid interim order made by this Court. The report shows that on the basis of whatever material, which was collected upto 7th December, 2017, the investigating agency had formed opinion that as against the present petitioner there was more than sufficient material to file charge-sheet. It can be said that more investigation is possible after arrest of the petitioner and he is avoiding the arrest by using the interim order made by this Court. It can be also said that the Zilla Parishad is protecting its officers when apparently they are also involved in the fraud. When the Executive Engineer of Water Supply had noticed that measurements were false, for the present stage, inference is easy that the officers had joined hands with

the committee and with the contractor. Thus, in such cases, only due to the officers, public money is grabbed by the office bearers of Village Panchayat and the contractor like the present petitioner. Huge amount was withdrawn by the present petitioner. It needs to be ascertained as to how he could get that amount when the work was not executed. Fortunately, he could not encash the cheque of rupees four lakh as the Zilla Parishad did not give permission for that.

13 At the cost of repetition, this Court is observing that it is always open to the police to make investigation against the officers of Zilla Parishad also in such a case. Such cases cannot be taken lightly and fear needs to be created in the minds of both contractor and public officers. Public money is misappropriated only due to such officers. It can be said that unfortunately, may be due to interim order made by this Court, further progress is not made in the investigation. This Court hopes that the investigating agency will speed up the investigation.

14 The learned counsel for petitioner has mentioned three reported cases in the petition and they are as follows:

- a) 2001 AIR SCW at page 4435, (*S.N. Palnitkar Vs. State of Bihar*) ;
- b) (2016) 1 SCC 348, (*IARC Vs. Nimra Cerglass Technics Pvt Ltd.*) ; and

- c) (2015) 6 SCC at page 287, (*Priyanka Srivastava Vs. State of U.P.*).

15 The facts and circumstances of each and every criminal case are always different. This Court has mentioned the relevant facts of the present matter. On the basis of those facts, it can be said that there is material against the present petitioner to proceed ahead and make investigation against him. It is not a fit case where the order of investigation made against the petitioner can be quashed and set aside. The Trial Court is not to get influenced by the observations made by this Court. In the result, the petition stands dismissed. Interim relief stands vacated.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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