IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6168 OF 2017

Surekha Shyamrao Shinde and Anr. **....Petitioners.**

Versus

The State of Maharashtra and Anr. **....Respondents.**

Mr. S.J. Salunke, Advocate for petitioners.
Mr. M.M. Nerlikar, APP for respondent/State.

CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.
DATED : 22/10/2020.

ORDER :

1. The petition is filed for relief of quashing of F.I.R. No. 64/2012 dated 3.11.2012 registered with Pimpaldari Police Station, District Parbhani. The crime is registered for offences punishable under sections 420, 409, 406 and 34 etc. of Indian Penal Code. When the crime was registered in the year 2012, the present proceeding was filed on 7.11.2017. Chargesheet is already filed and relief is claimed for quashing of R.C.C. No. 30/2014 also. Both the sides are heard.

2. The record produced shows that the crime was registered on the basis of report given by Development Officer of Panchayat Samiti Gangakhed. He was instructed to give the report by Chief

Executive Officer of Zilla Parishad, Parbhani. In the report, allegations are made that there was misappropriation of public money of Rs.9,99,840/- by the Chairman of Committee Smt. Surekha and Secretary, Gramsevak Shri. Sadashiv. This amount was part of the amount which was sanctioned for cement bandh and this bandh was to be created for storage of water. Total amount of Rs.24,99,600/- was sanctioned for this work. As per the scheme around 40% of the amount i.e. Rs.9.99 lakh was released in favour of Gram Samiti constituted by aforesaid two persons on 6.5.2011. This amount was deposited in joint account of Smt. Surekha and Shri. Sadashiv. In the report dated 3.11.2012 allegations are made that this entire amount was withdrawn by these two persons, they used money for about one and half year and no work was executed by using this work. It is contended that on 11.6.2012 and 3.12.2011 these two persons were directed to deposit money in the account as no work was executed, but the amount was not deposited and so, the report was required to be given.

3. The papers of investigation show that chargesheet came to be filed on 26.12.2013 and with the chargesheet some subsequently created record is also there. The record contains the audit done and the inquiry made after making spot inspection. Repeated correspondence was made with these two persons to see that the work is completed and it was done up to 20.10.2012. The

report of Geologist and Water Conservator were also collected. It was noticed that this amount was not spent on the work.

4. It was submitted by the counsel of the petitioners that the amount was utilized for purchasing articles and for giving advance for purchasing articles. When nothing was concrete and when no work was executed, this amount could not have been given much less by Local Body. The learned counsel submitted that there are statements of some persons showing that they have received amount as advance money, but that record cannot help the petitioners to say that there was no misappropriation of public money.

5. The provision of section 403 of I.P.C., Explanation I shows that dishonest misappropriation for time only is misappropriation within the meaning of section 403 of I.P.C. Thus, for the period of more than one and half year money was with the petitioners and it was not utilized for public purpose. This act clearly falls under the aforesaid explanation of section 403 of I.P.C. Such incidents are increasing day by day. This way the elected representatives are using the public money. On the other hand, due to such acts the public are not getting benefit of the Government schemes. The storage tank could not be constructed due to act of these two persons and so, this lapse cannot be ignored by simply saying that it

is irregularity. This Court holds that it is not a fit case where relief claimed can be given. In the result, the application stands dismissed.

[M.G. SEWLIKAR, J.] **[T.V. NALAWADE, J.]**

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