

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

CRIMINAL WRIT PETITION NO.100 OF 2019

1. Prashant S/o Chandrakant Patil
Age : 30 years, Occ : Service (Asst.
Jr. Engineer), Panchayat Samiti,
Sakri, R/o 36, Shrirang Colony,
Deopur, Dhule, Tq. & Dist. Dhule
2. Mohan S/o Dhulji Gavit
Age : 35 years, Occ : Service (Sectional
Engineer), Panchayat Samiti,
Sakri, R/o 21, Vikas Colony,
Sakri, Tq. Sakri, Dist. Dhule.

..PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through Investigation Officer,
Sakri Police Station,
Tq. Sakri, Dist. Dhule.
2. Subhash S/o Shankar Bhamare
Age : 52 years, Occ : Service,
Extension Officer (Grampanchayat),
Panchayat Samiti, Sakri,
R/o C/o Panchayat Samiti,
Sakri, Tq. Sakri, Dist. Dhule.

..RESPONDENTS

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Mr.N.B. Narwade, Advocate for the petitioners
Mr.S.G. Sangle, APP for respondent no.1/State
Mr.N.N. Desale, Advocate for respondent no.2.

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**CORAM : RAVINDRA V.GHUGE
AND**

B.U.DEBADWAR, JJ.

DATE : 30th March, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge):-

1. Rule. Rule made returnable forthwith and heard finally, with the consent of the parties.

2. We have heard the extensive submissions of the learned Advocate for the petitioners, the learned Prosecutor on behalf of the State and the learned Advocate on behalf of respondent no.2-informant.

3. After an extensive hearing and upon going through the record, threadbare, we expressed our view to the petitioners that, we are not convinced in entertaining this Petition, for quashing of the F.I.R. under section 482 of the Code of Criminal Procedure (In short, "the Cr.P.C."), and that he may take instructions, as to whether the petitioners desire to withdraw this Petition, since a reasoned order would attract certain observations. The learned Advocate for the petitioners submits, on instructions, that the petitioners desire an order from this Court.

4. By this Petition, the petitioners have put-forth prayer clause "B", which reads as under :-

"B) That, by issuing appropriate writ, order or direction in the like nature, the proceeding of R.C.C. No.150/2018 pending before the Ld. J.M.F.C., Sakri, Tq. Sakri, Dist. Dhule in Crime No.I-157/2016 registered at Sakri Police Station, Tq. Sakri, Dist. Dhule dated 07.11.2016 for the offence punishable U/s 420, 464, 465, 468, 471 r/w. 34 of the Indian Penal Code, may kindly be quashed and set aside to the extent of present petitioners"

5. Though, this Petition was filed on 18.01.2019, this Court has not granted any ad-interim relief to the petitioners and in fact, has made it clear that the pendency of this matter does not amount to granting any stay to the proceedings before the trial Court.

6. Respondent No.2 is the Extension Officer of the (Grampanchayat), Panchayat Samiti, Sakri, Tq.Sakri, Dist. Dhule. In fact, he is the person, who has blown the lid over a house scam, known in local parlance, as "Gharkul Ghotala". He preferred a complaint with the Police Station, Sakri on

05.11.2016, by which, he has pointed out that one Lakadibai Bhimaji Pawar had died several years ago and the second wife of Bhimaji Pawar; viz. Ukhadibai Bhimaji Pawar, applied for a financial grant under the "*Indira Awas Gharkul Yojna*", by impersonating as Lakadibai, vide which she was entitled for a financial assistance of Rs.1,00,000/-. Such monetary assistance was for the plain areas and Rs.1,05,000/- for the hilly region. These amounts were to be paid in three installments, i.e. two installments of Rs.35,000/- each, and the last installment of Rs.25,000/-. Rs.5,000/- was for the beneficiary. Rs.95,000/- were to be spent on the construction of the house and a sanitary block (toilet block).

7. As Ukhadibai had created a fraud, which came to the knowledge of respondent no.2, that he filed a complaint with the Police Station.

8. The F.I.R. was registered on 07.11.2016. Subsequently, a charge-sheet has also been filed against all the accused, out of which, these two petitioners are accused nos.4 and 5. They are Assistant Junior

Engineer and Sectional Engineer, respectively with the Panchayat Samiti, Sakri.

9. The learned Advocate for the petitioners has strenuously canvassed that the role of the petitioners is earmarked only at the stage of granting the third installment of Rs.25,000/-. That third installment has still not been paid and the beneficiary Ukhadibai, who is an impostor of Lakadibai, has promptly returned the entire amount of Rs.70,000/-, received by her, to the Panchayat Samiti. He further submits that if the scheme of this "*Gharkul Yojna*" is perused, the offence on the part of Ukhadibai was exposed before the role of the petitioners could commence. They cannot be blamed for the acts committed by the Gram Sevak, Village Development Officer or the Sarpanch. They had no role to play in the grant of the first two installments, and therefore, they have been incorrectly arrayed as accused in the F.I.R.

10. The learned Prosecutor and the learned Advocate representing the informant, have pointed out the Government Resolution dated 12.02.2014, introduced by the Gram

Vikas and Jalsandharan Vibhag (Village Development and Water Conservation Department), based on the Indira Awas Yojna, sponsored by the Central Government, for encouraging the construction of a house with a toilet block, for the persons, who are below poverty line (BPL). We are pointed out, the manner of inspection of the construction of the house beginning from the marking of the layout, which is borne out from the Government Resolution.

11. We have gone through the said Government Resolution dated 12.02.2014, threadbare. On internal page 3, we find at clause 3, that the beneficiary has to establish that he/she has an electricity connection obtained under the "Rajiv Gandhi Gramin Electrification Scheme". This electricity connection has to be acquired before the grant of the third installment. On internal page 2 of the Government Resolution, it is provided that there would be convergence (एककेंद्रभिमुखतेसाठी) of the Indira Awas Yojna, along with other schemes, while considering the application of a beneficiary. A total amount of Rs.70,000/- would be payable to the beneficiary under the MGNAREGS

and a separate amount is earmarked for the payment for the unskilled masonry labourers. This amount is not a part of the first two installments, as is attempted to be conveyed to us by the learned Advocate for the petitioners.

12. He has tried to pass off such information to us to support the contention of the applicants, that they are unconcerned with the grant of the first two installments and the payment of the unskilled masonry labourers has to be done by the beneficiary. The scheme actually provides for a separate amount to be paid to the unskilled masonry labourers, who are working under the Employment Guarantee Scheme. We find that the role of these two petitioners is clearly earmarked, while making the payments to these masonry labourers separately, after verifying that they had actually worked on the construction of the house and the toilet block.

13. Clause 2, on internal page 3 of the Government Resolution, indicates that the Central Government has introduced the "Nirmal Bharat Abhiyan", for construction of toilets.

There has been convergence of "Nirmal Bharat Abhiyan scheme" with "the Indira Awas Yojna" and "the Rajiv Gandhi Gramin Vidyutikaran Yojna". The role of the Assistant Engineer, Maharashtra Electricity Distribution Company and the Gat Vikas Adhikari of the Panchayat Samiti is found to the extent of confirmation that the beneficiary has electricity supply connection, before the third installment is released. Clause 4 on internal page 3, indicates the responsibility of the State Government to supply water connection to the Gharkul beneficiary.

14. On internal page 4 of the Government Resolution, we find the methodology for construction of such housing blocks. The beneficiary necessarily has to be registered under the BPL Scheme. His name would be entered in the wait list. The Gat Vikas Adhikari has to verify these aspects. The said officer also has to confirm, that the beneficiary has his own land, within the limits of the said Panchayat Samiti, on which he would construct the housing block and it should have to be proved that he does not have any other permanent housing structure. A panchanama has to be drawn for this purpose

and thereafter, the first installment is released.

15. After the first installment is released, the Government Resolution provides that the Sectional Engineer i.e. petitioner no.2 herein, and Kanista Abhiyanta i.e. petitioner no.1 herein, have to extend technical support for construction upto the plinth level. They have to give this technical assistance and mark-out on the spot of the land, where the construction has to commence (घरकुल बांधकामासाठी शाखा अभियंता / कनिष्ठ अभियंता यांनी घरकुलाच्या पायाभरणी / जोते बांधकामासाठी तांत्रिक मार्गदर्शन करावे आणि कामाला सुरूवात करण्यापूर्वी मार्क आऊट द्यावे). This clause further provides, that the funds have to be released by these two petitioners for payment towards the unskilled masonry labourers, and that amount has to be deposited in the accounts of such labourers.

16. We have no hesitation in concluding that no payment has to be made in advance, to the labourers, even before they could commence the work, which clearly indicates from the scheme that after the labourers are deployed and work has commenced, these

petitioners have to verify the number of labourers, their identity, their actual work performed and then make the payment.

17. After clause 3, referred to above, clause 6 provides that the first and second site inspection is to be done by the Gram Sevak. If, clause 4 providing the first site inspection and clause 5 providing the second site inspection, are read in tandem with clause 3, it would lead to an impression that these two petitioners have to conduct the site inspection. However, going by the phraseology used in clause 6, the Gram Sevak is required to carry out the site inspection and the beneficiary, the Sarpanch/Upsarpanch or two members of the Gram Panchayat have to be present and photographs have to be clicked at the site. A report has to be submitted with the signature of the beneficiary, the representative of the Gram Panchayat and Gram Sevak, along with the photographs, to the Block Development Officer (Gat Vikas Adhikari) and this report is then tendered to the petitioners.

18. Considering the above, we do not find that the case is as plain and simple, as

has been projected before us by the petitioners, that the role of the petitioners would come into play only at the stage of granting the third installment. We can clearly see their role in clause 3, since a lay-out has to be marked out on the spot, where the house is to be constructed and this cannot happen until these petitioners visit the spot and mark the lay-out. Thereafter, these two petitioners have to sanction the payments of the unskilled masonry labourers.

19. Practically, in all matters under Section 482 of the Code of Criminal Procedure, 1973, the accused approaches the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in its jurisdiction under Section 482, is invoked for seeking the quashing of the F.I.R..

20. In *C.B.I. vs. Tapan Kumar Singh*, (2003) 6 SCC 175 : AIR 2003 SC 4140, the Honourable Supreme Court has held in paragraph 22 that "*The law does not require the mentioning of all the ingredients of the*

offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency." It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

21. In the ***State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89***, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

22. In *Kurukshetra University vs. State of Haryana*, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench), the Honourable Supreme Court has observed thus:-

"It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice."

23. In *Geeta Mehrotra and another vs. State of Uttar Pradesh and another*, (2012) 10 SCC 741, the Honourable Supreme Court has held that in the absence of any specific allegation and an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.

24. In *Parbatbhai Aahir alias Parbatbhai*

Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

- “(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
- (2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
- (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of

- justice would justify the exercise of the inherent power.
- (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.
- (5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.
- (6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.
- (7) As distinguished from serious offences, there may be criminal

cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

- (8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*
- (9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*
- (9) There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*

25. Considering the law laid down in the above-referred judgments, the Hon'ble Apex Court has crystallized that if the F.I.R. makes out a offence, this Court should not assess the merits of the evidence, as may be available, at the stage of considering a Petition for quashing of the F.I.R. under section 482 of the Cr.P.C.

26. In our view, this Court cannot indulge in exercise of splitting hair, while considering whether the accused have played a small role in an offence or a major role. We find from the F.I.R. that these two petitioners had a role to play, as referred to hereinabove, and therefore, an offence is made out against them in the F.I.R. In this backdrop, we do not deem it appropriate to exercise our jurisdiction.

27. This petition, being devoid of merits, is therefore, dismissed.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)