

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

**2 CRIMINAL WRIT PETITION NO.890 OF 2019
WITH
CRIMINAL APPLICATION NO.716 OF 2020
IN
CRIMINAL WRIT PETITION NO.890 OF 2019**

ABLUK S/O. HIRAJI GHUGE

.. Petitioner

VERSUS

THE STATE OF MAHARASHTRA

AND OTHERS

.. Respondents

...

Advocate for petitioner: Mr D.J. Choudhari h/f. Mr R.C. Bramhankar

APP for respondent nos.1 to 3 : Mr K.S. Patil

Advocate for respondent no.4 : Mr N.V. Gaware

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**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

Date : 26-04-2021

PER COURT :-

1. We have extensively heard the learned Advocate for the petitioner, the learned Prosecutor on behalf of respondent nos.1 to 3 and the learned Advocate for respondent no.4. With their assistance, we have considered prayer clause 'B' and the petition paper-book.

2. Prayer clause 'B' reads as under :

“This Hon’ble Court be pleased to issue appropriate directions to the respondent Nos.2 & 3 to register the F.I.R. against the respondent No.4 and concerned persons as per the complaint dated 19.03.2019 EXH-B submitted by the petitioner to the Patoda Police Station, within 15 days or as stipulated by this Hon’ble Court.”

3. The petitioner had lodged a complaint dated 19-03-2019 before the Police Inspector, Police Station Patoda alleging misappropriation of an amount of Rs.3,27,00,000/- approximately with the active involvement of respondent no.4. Though the Police Inspector did not register the complaint as an FIR under Section 154 of the CrPC, he yet conducted an inquiry. The learned Prosecutor submits that, the said Police Inspector has filed an affidavit-in-reply dated 02-08-2019 and has stated in the affidavit-in-reply, in brief as under:

(a) An amount of Rs.3,27,00,000/- was sanctioned under the Rashtriya Peyjal Yojana.

(b) The scheme was to be implemented under the supervision of the Gram Panchayat Patoda.

(c) The said scheme was implemented with effect from 23-06-2011 when it was Patoda Gram Panchayat, presently Nagar Panchayat from 2018.

(d) At the relevant time in 2001, respondent no.4 Sayyad Abdulla Sayyad Yasin was the Chairman of the Committee, which headed the scheme.

(e) Member Secretary was one Shri Dattatraya Shankarrao Nagare, who was the Gramsevak at the relevant time.

(f) After the complaint was filed by the petitioner, the Inspector had issued a letter dated 21-07-2019 to the Deputy Engineer, Water Supply Department, Patoda (Rural Water Department) to enquire into the scheme and assess as to whether there was any misappropriation.

(g) Pursuant to above, the Deputy Engineer conducted an inquiry and called upon the Tahsildar to submit a report. The report of the Tahsildar indicates that there was no misappropriation.

(h) Accordingly, the Deputy Engineer informed about the said inquiry to the Police Inspector, who tendered a report to the Superintendent of Police, Beed stating that misappropriation was not detected in the inquiry by the Deputy Engineer.

4. The learned Advocate for the petitioner strenuously contends that, there is enough material, which,

if inquired into, would indicate that there was a misappropriation at the behest of respondent no.4.

5. The learned Advocate for respondent no.4 submits that he has filed an affidavit-in-reply and has contended that the petitioner has no *locus standi* to file this petition and that there was no misappropriation.

6. We are dealing with this petition in our criminal writ jurisdiction. We have no doubts that our writ jurisdiction can be exercised only if all other statutory efficacious remedies available to an aggrieved party have been availed of and, yet, the grievance of the petitioner is not redressed. We are also conscious of the fact that, we cannot deal with disputed questions in a writ petition and we cannot take over the duties of the learned Judicial Magistrate exercising jurisdiction under Section 156 (3) of the CrPC.

7. The learned Advocate for the petitioner submits that, if this Court is not inclined to entertain this petition,

liberty to avail of the statutory remedy under Section 156 (3) of the CrPC be kept open and the time spent by the petitioner in this Court since 09-06-2019 till the passing of this order, be considered as a ground for condonation of delay, if any.

8. In view of the above, this petition is disposed off. In the event the petitioner avails of a remedy under Section 156 (3) of the CrPC, we make it clear that, we have not expressed any opinion with regard to the said proceedings, save and except that, the time spent by the petitioner in this Court from 09-06-2019 till the passing of this order, may be considered as a ground for condonation of delay, if any.

9. Pending Criminal Application No.716 of 2020 does not survive and stands disposed of.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE