

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.291 OF 2020

1. Khinduji s/o Raoji Padmane
Aged about 55 years,
Occ: Service, R/o Bhagirath Nagar,
Gudadhi Akola, Tq. & Dist. Akola.
2. Rajesh s/o Shankarappa Gunjal
Aged about 55 years, Occ: Service,
R/o Borgaon Manju,
Tq. & Dist. Akola. **APPLICANTS**

...V E R S U S...

State of Maharashtra through
Police Station Officer,
Police Station Murtizapur,
District Akola. **NON-APPLICANT**
RESPONDENT

Mr. A.M. Tirukh, Advocate for Applicants.
Mr. N.R. Rode, APP for Non-Applicant/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **1st FEBRUARY, 2021.**

ORAL JUDGMENT:

The applicants are arraigned as accused 3 and 4 in
Crime 284 of 2014 registered with Police Station Murtizapur,
District Akola for offence punishable under Section 409 of the
Indian Penal Code.

2. Culmination of investigation led to the submission of the final report under Section 173 of the Criminal Procedure Code, 1973 ('Code') in the Court of Judicial Magistrate First Class, Murtizapur, District Akola.

3. The applicants moved an application under Section 239 of the Code seeking discharge. The substratum of the application seeking discharge is two fold. The first is the absence of sanction under Section 197 of the Code and the other is the contention that even if the entire material placed on record along with the final report is considered at face value, no case is made out to proceed against the applicants.

4. The learned Magistrate rejected the application seeking discharge. The applicants approached the Sessions Judge, Akola in Criminal Revision Application 89 of 2019, which is dismissed vide judgment dated 12.12.2019. Being aggrieved, the applicants are invoking the inherent powers under Section 482 of the Code.

5. The applicant 1 is the Extension Officer and applicant 2 the Gram Panchayat and are irrefutably public servants.

The competent authority declined to accord sanction under Section 197 of the Code. However, the courts below have dealt with the discharge application on the premise that Section 197 of the Code is not attracted since the allegation is that the accused entered into a criminal conspiracy to commit breach of trust, and the acts alleged did not have such nexus with the discharge of official duties as would bring into play the requirement of sanction.

6. It is not necessary to make any definite observation on the concurrent conclusions arrived at on the aspect of sanction. I am of the considered view, that the material on record is grossly insufficient even to arouse a strong suspicion, and therefore, it would be an abuse of the process of law to compel the applicants to undergo the agony of a trial, as a ritualistic formality.

7. The allegation in the report is that 2405 G.I. sheets were supplied by the government to the Zilla Parishad, Akola for distribution to the persons belonging to the Scheduled Castes. 198 G.I. sheets were found missing. The material on record indicates that it was applicant 2 – Rajesh Gunjal who lodged the report that 198 G.I. sheets were missing. It further appears from the material

on record that the G.I. sheets were stored in godown – five of which accused 1 Suresh Ghate was in-charge. The incriminating material in the charge-sheet is an inquiry report submitted by the Block Development Officer (BDO) in which the role attributed to the applicants is the failure to maintain the record. The statements of witnesses are in-essence based on the said inquiry report. Save and except the finding recorded in the inquiry conducted by the BDO that the applicants did not maintain the record properly, there is no material as would be sufficient to even arouse a strong suspicion that the applicants entered into a criminal conspiracy with accused 1 and 2 pursuant to which the 198 G.I. sheets were either misappropriated or converted.

8. The learned APP Mr. Rode fairly states that another inquiry report was conducted by Deputy Chief Executive Officer of the Zilla Parishad which exonerates the applicants, and that, it was presumably in view of the findings of the said inquiry that the competent authority refused to accord sanction. The said inquiry report is not a part of the charge-sheet. However, it is well settled, that while exercising jurisdiction under Section 482 of the Code this Court would be justified in considering the material which is either incontrovertible or which is not in dispute.

9. Unfortunately, the learned Sessions Judge does not appear to have sifted the material on record and all that is observed is that there is a strong *prima facie* evidence against the applicants. The learned Magistrate observes that accused 3 and 4 – the present applicants did not keep written record. Beyond the said observation, there is no attempt to sift the material on record for the limited purpose of ascertaining whether a case for proceeding against the accused 3 and 4 is made out.

10. It is well settled, that the court is not expected to act as a post office. While a mini trial is not expected, the material placed on record along with the final report and any incontrovertible material to which the attention of the court may be invited by the accused, will have to be sifted to ascertain whether the accused deserves to be tried. A strong suspicion, which is not whimsical or subjective, but which is based on material on record, is ordinarily sufficient to frame charge. However, in the facts of the case, there is no material whatsoever as would suggest complicity in crime. While the applicants may have committed some administrative irregularity, if at all, that is a matter within the domain of the disciplinary authority. In my considered view, no case is made out to put the applicants to trial.

11. The orders impugned are quashed.
12. This application is allowed in terms of prayer clause (i) which reads thus:
- (i) allow the application and quash and set aside the impugned order dated 12/12/2019 passed by the learned Additional Sessions Judge, Akola in Criminal Revision 89/2019 (Khinduji + 1 ...Vs.. State) (Annexure-A) and the impugned order dated 17/06/2019, below Exh. 50 passed by the learned Judicial Magistrate First Class Murtizapur in Regular Criminal Case No.222/2017 (State ...Vs.. Suresh & others) (Annexure-B) thereby dismissing the discharge application filed by the applicants.

JUDGE