

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

CRIMINAL APPLICATION (APL) NO. 810/2020

APPLICANT : Shri Pradeep s/o Prakashchand Ranka,
aged about 45 years, Occ. contractor,
Resident of Plot No. 567, Sandesh
Vaisnodevi Square, Central Avenue Road,
Hiwari Layout, Nagpur

...VERSUS...

- NON-APPLICANTS:**
1. State of Maharashtra,
through Police Station Officer,
Police Station : Hingana, Dist. Nagpur.
 2. Shri Hiralal Satyanarayan Pande,
Age - 57 years, Occ. Cultivator,
 3. Sau. Mala w/o. Hiralal Pande,
Age 53 years, Occ. Cultivator,
 4. Shri Narendra s/o Satyanarayan Pande,
Age 63 years, Occ. Cultivator,
 5. Sau. Rekha w/o Narendra Pande,
Age 58 years, Occ. Cultivator,

All 2 to 5 are resident of : Village - Kanholibara
Tahsil - Hingna, Dist. Nagpur. State - Mah.

Shri J.S.Chilotra, Advocate for applicant
Shri A.R.Chutke, APP for respondent - State
None for respondent Nos. 2 to 5.

CORAM : MANISH PITALE, J.
DATE : 26/07/2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard learned counsel for the applicants.

Admit.

Learned APP appearing on behalf of the non-applicant No.1 - State waives notice.

3] By this application, the applicant has sought quashing and setting aside of the order dated 20.06.2016, whereby the Court of Judicial Magistrate, First Class, Hingna, issued show-cause notice to the applicant and other accused persons in the context of the complaint filed by non-applicant Nos. 2 to 5, alleging offences under Section 420, 427 and 441 of the Indian Penal Code (I.P.C.). The applicant has also challenged notice dated 04.01.2017 issued by the said Court to appear in the context of the said complaint before the Magistrate. The applicant contends that even if the contents of the complaint are to be taken into consideration, no offence is made out against the applicant.

3] This Court issued notice in the present application and granted ad-interim relief in favour of the applicant on 26.02.2021 and the said interim order has continued to operate. As a consequence, further proceedings in the said complaint, as against the applicant, have remained stayed. Despite service of notice on non-applicant Nos. 2 to 5, who are the original complainants, they have chosen not to appear before this Court. This application was adjourned on number of occasions to facilitate the appearance on their behalf, but they have chosen not to appear.

4] In this backdrop, the learned counsel for the applicant and the learned APP appearing for the State were heard. Mr. Chilotra, learned counsel appearing for the applicant submitted that the applicant is a Government Contractor, who had merely executed the contract of construction of a canal. The grievance of the non-applicant Nos. 2 to 5 in the complaint is that the canal was not only constructed through their land which was acquired, but also through certain portions of their lands which were not acquired by the State and that this was done at the behest of Engineers and other officers of the Irrigation Department. It was submitted that even if the statements made in the complaint are taken as it is, yet no offences

are made out against the applicant. On this basis, it was submitted that the Magistrate had erred in issuing notice against the applicant.

5] Mr. Chutke, learned APP appearing on behalf of non-applicant No.1 - State invited attention of this Court to the complaint filed by non-applicant nos. 2 to 5. It was submitted that grievance of the said non-applicants appears to be that the concerned officers of the Irrigation Department have committed fraud on the said non-applicants by causing construction of the canal through the land belonging to them, which was never acquired and that, therefore, non-applicants have suffered loss of valuable agricultural land.

6] This Court has perused the contents of the complaint dated 26.09.2012. It is alleged by non-applicant Nos. 2 to 5 that the accused persons, including the applicant herein, are liable to be tried for offences under Section 420, 427 and 441 of the I.P.C. These offences pertain to cheating, causing mischief and criminal trespass. But, perusal of the complaint would show that the grievance of non-applicant nos. 2 to 5 is that engineers of the Irrigation Department caused construction of the canal in such a manner that it was

constructed in a zig-zag fashion for no reason, thereby causing overflowing of water and loss of portions of the lands belonging to non-applicant Nos. 2 to 5, which were not even acquired by the State for construction of canal. The entire emphasis in the complaint is on the alleged fraudulent manner in which the map was changed and the canal was constructed at the behest of the Engineers and other responsible officers of the Irrigation Department. There does not appear to be any specific allegation against the applicant before this Court, who was the contractor when the canal was constructed. It is not even the allegation in the complaint that the change in the map and the consequent alleged illegal construction of the canal was at the behest of the applicant. In fact, it is alleged in the complaint itself that the Engineers of the Irrigation Department indulged in such an illegal activity to benefit some big land holders and also under the political influence of such big land holders.

7] Accepting the complaint as it is, this Court finds that there is no specific allegation against the applicant, who was merely the Government contractor, in the context of the offences under Section 420, 427 and 441 of the I.P.C. The applicant merely executed the project of construction of canal as directed by the

engineers and other officers of the Irrigation Department. Therefore, there is substance in the contentions raised on behalf of the applicant before this Court. Since there is no material to indicate even prima facie existence of ingredients of the aforesaid offences, insofar as the applicant is concerned, the Magistrate committed an error in entertaining the complaint against the applicant and in issuing notice by impugned order dated 20.06.2016.

8] In view of the above, the present application is allowed. Accordingly, the complaint bearing Misc. Criminal Application No. 153/2012, pending before the Court of Judicial Magistrate, First Class, Hingna, Nagpur, is quashed insofar as applicant before this Court is concerned. Consequently, the impugned order dated 20.06.2016 and notice dated 04.01.2017, insofar as they pertain to the applicant are also quashed and set aside.

9] Rule is made absolute in above terms. No order as to costs.

JUDGE