

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

CRIMINAL APPLICATION (APL) NO. 517 OF 2012

- 1) Gangadhar Narayan Raut,
Aged about 57 years, Occ. - Service,
R/o Shegaon Road, Near Petrol Pump,
Telhara, Tq. Telhara, District Akola.
- 2) Diganmbar Kashinath Pewaskar,
Aged about 52 years, Occ. - Service,
R/o Gokarna Park, Dabaki Road,
Akola.
- 3) Ashok Narayan Umbarkar,
Aged about 47 years, Occ. - Service,
R/o Sant Savata Colony, Hiwarkhed
Road, Telhara, Tq. Telhara, District
Akola.
- 4) Uttam Devidas Telgote,
Aged about 43 years, Occ. - Service,
R/o Rahul Nagar, Near Buddha Mandir,
Akot, District Akola.
- 5) Pandurang Devlal Garje,
Aged about 47 years, Occ. - Service,
R/o New Khetan Nagar, Near Prajakta
Kanya Vidyalaya, Kaulkhed, Akola.

.... **APPLICANTS**

VERSUS

- 1) State of Maharashtra,
through PSO, Talhara, Tq. Telhara,
District Akola.
- 2) Ramesh Krushnadeo Gupta,
Aged 55 years, Occ. - Business,
Proprietor M/s. Gupta Agencies,

Hiwarkhed, Tq. Telhara, District
Akola.

.... NON-APPLICANTS

Mr. Mayunkh Awade, Counsel h/f. Mr. F.T. Mirza, Counsel for the
applicants,
Mr. V.A. Thakre, Addl.PP for non-applicant 1/State,
Mr. U.P. Dable, Counsel for non-applicant 2.

CORAM : ROHIT B. DEO, J.
DATED : 14th JANUARY, 2021

ORAL JUDGMENT :

Heard Mr. Mayunkh Awade, learned Counsel holding for
Mr. F.T. Mirza, Counsel for the applicants, Mr. V.A. Thakre, learned
Additional Public Prosecutor for non-applicant 1/State and Mr. U.P.
Dable, learned Counsel for non-applicant 2.

2. The applicants, who irrefutably are public servants, are invoking
this Court's inherent powers in assailing the judgment dated 08-6-2012
rendered by the learned Additional Sessions Judge, Akot in Criminal
Revision 27/2010 whereby the order of issuance of process dated
15-4-2010 rendered by the learned Judicial Magistrate First Class,
Telhara in Criminal Case 8/2007, is confirmed.

3. Few facts, which are relevant, may be noted.

(i) Applicants 1, 2 and 5 are working as Village Development

Officer and applicants 3 and 4 as Gramsewak, with the Akola Zilla Parishad.

(ii) The applicants held the charge of Secretary of the Hiwarkhed Village Panchayat from 01-7-2001 to 25-6-2006. It is further irrefutable that Mr. S.N. Rahate was holding the charge of Secretary of the Hiwarkhed Village Panchayat from 01-4-2001 to 30-6-2001. The applicants contend that non-applicant 2, claiming to be entitled to recover amount of Rs.74,950/- from the Village Panchayat as the cost of the material supplied, instituted Regular Civil Suit 5/2002.

(iii) Applicant 5 was the Secretary of the Village Panchayat when the suit came up for recording of evidence. Applicant 5 produced the record and attended the proceedings on behalf of the Village Panchayat. The learned Civil Judge dismissed the suit vide judgment dated 23-1-2008.

(iv) The applicants contend that during the pendency of the suit, non-applicant 2 preferred an application under Section 340 of the Criminal Procedure Code, 1973 (Code) alleging production of false documents in the trial. The Civil Judge declined to initiate action.

(v) Non-applicant 2 instituted a private complaint against the applicants and others including the elected members of the Village Panchayat and according to the applicants herein, the complaint is predicated on the allegation of production of false and forged

documents before the trial Court. The complaint seeks initiation of prosecution and punishment under Sections 406, 409, 419, 420, 422, 468, 471 and 477(A) read with Section 34 of the Indian Penal Code.

(vi) The applicants contend that neither in the complaint nor in the verification statement is a specific role attributed to the applicants.

(vii) The learned Magistrate opted to defer issuance of process and called for report in exercise of power under Section 202 of the Code. The Police Station Officer, Hiwarkhed submitted report dated 25-6-2009 and the contention of the applicants is that the report rules out the culpability of the applicants herein.

(viii) The applicants submit that noticing that there was no sanction under Section 197 of the Code, the learned Magistrate called upon the complainant to address the Court on the maintainability of the complaint. It appears from the record, that the learned Magistrate did not come thereafter, consider the issue of sanction.

4. The learned Magistrate considered the police report and directed that the Ex-Officio Chairman of the Standing Committee of Zilla Parishad, Akola to conduct an enquiry as is envisaged under Section 202(1) of the Code. In deference to the said order, the Deputy Chief Executive Officer and Ex-Officio Secretary, Standing Committee, Zilla Parishad, Akola submitted report dated 20-8-2009. The said report

indicts the then Secretary Mr. S.N. Rahate and exonerates the applicants.

5. The learned Magistrate labouring under the impression that the police report and the report submitted by the Deputy Chief Executive Officer are inconsistent, directed re-audit under Section 140 of the Bombay Village Panchayats Act, 1958.

6. Non-applicant 2 challenged the order of the learned Magistrate directing re-audit vide Criminal Application 3641/2009, which was partly allowed vide judgment dated 08-3-2010.

7. It would be apposite to notice the following observations of the learned Single Judge who decided Criminal Application 3641/2009.

“4. I have gone through the impugned order and also heard learned counsel for rival parties. Having heard learned counsel for the applicant, I find that the trial Court has not at all given any reason as to why the trial Court should not act on the report submitted by the P.S.O. after investigation. The report is in necessary details. The court should have called all documents etc. collected during investigation, applied its mind, and after hearing the complainant it could have decided the persons against whom the process could be issued. Audit under The Bombay Village Panchayats Act has nothing to do with the criminal complaint although in future the same could be utilized in evidence. Hence, the report from Chief Executive Officer of Zilla Parishad regarding audit and re-audit will not be necessary at this stage. That there is

power in the Magistrate to direct investigation by 'other person' is supported by the following decisions -

- (i) 1976 Cri.L.J. 876*
- (ii) 1995 Cri.L.J. 2732,*
- (iii) 1081 Cri.L.J. 139,*
- (iv) 1995 Cri.L.J. 209.*

In the result, the following order will sub-serve the ends of justice."

5. Criminal Application No.3641 of 2009 is partly allowed. Impugned order dated 2-11-2009 below Ex.1 in Criminal Case No.8 of 2007 passed by Judicial Magistrate First Class, Telhara is quashed and set aside. Proceedings are remitted to the trial Court for taking decision on the police report dated 25-6-2009 submitted by Police Station Officer, Telhara, after investigation."

8. The learned Magistrate was pleased to issue process for offences punishable under Sections 406, 409, 419, 420, 422, 468, 471 and 477(A) read with Section 34 of the Indian Penal Code vide order dated 15-4-2010. The order of the learned Magistrate reads thus :

"Perused the complaint. Perused the verification. Perused the available material on record. Perused the report filed by Hiwarkhed police under section 202 of Cri.P.C. It is submitted in the above report that the secretary and other persons have manipulated false record and recorded false entry.

Furthermore, after having minute perusal of the report submitted by CEO dated 21-08-2009 it appears that it has alleged that expenditure shown is false.

If these two reports have been considered in juxtaposition then it appears that the prima facie material is available on record against the accused persons. Therefore issue process against all accused persons u/s 406, 409, 419, 420, 422, 468 and 471 and 477(A) read with section 34 of I.P.C."

9. The applicants and others arraigned as accused preferred Criminal Revision 27/2010 in which one of the grounds was that in the absence of sanction the complaint is not maintainable and process could not have been issued.

10. Criminal Revision 27/2010 is dismissed by the learned Additional Sessions Judge, Akot vide judgment dated 08-6-2012.

11. Perusal of the judgment dated 08-6-2012 reveals that the learned Sessions Judge has not dealt with muchless decided the objection that in the absence of sanction the process could not have been issued.

12. The submission of the learned Counsel Mr. Mayunkh Awade is two fold. The first submission is that there is nothing in the police report or the report of the Enquiry Officer who was directed to conduct an enquiry by the learned Magistrate as would implicate the applicants and the second submission is that the revisional Court has not even dealt with the issue of sanction.

13. Mr. U.P. Dable, learned Counsel for non-applicant 2 submits that while issuing process, elaborate reasons need not be recorded. The next submission is that the issue of sanction can be raised only after the

issuance of process.

14. That elaborate reasons need not be recorded while issuing process, is a settled law.

15. The issue of sanction in the present matter was raised after the issuance of process, before the revisional Court. The extended submission of Mr. U.P. Dable that the issue must necessarily be raised before the learned Magistrate who issued the process, does not appear to be consistent with the prevailing legal position.

16. The learned Magistrate considered it appropriate to defer the issuance of process and direct an enquiry under Section 202(1) of the Code. The order of issuance of process refers to and relies upon the report submitted by the Police Station Officer, Hiwarkhed and the report of the Enquiry Officer. It is trite law that the Magistrate is not bound, either way by the report of the police or the Enquiry Officer who is directed to conduct the enquiry. However, in the instant matter, the applicants are absolved of any responsibility by the Police Station Officer and the Enquiry Officer alike. The learned Magistrate has not given any reason other than the two reports to issue the process.

17. The Police Station Officer, Hiwarkhed records in the report dated 25-6-2009 that the Secretary who was in-charge from 26-4-2001 to 25-6-2001, is responsible for the alleged falsity and forgery of document/s. It is incontrovertible that none of the applicants was in-charge during the said period. Similarly, the report of the Deputy Chief Executive Officer and the Ex-Officio who was directed by the learned Magistrate to conduct the enquiry exonerates the applicants. Notably, the learned Magistrate has not differed from the two reports.

18. Perusal of the complaint reveals that an extremely vague and general allegation is made that “all the accused persons and particularly accused 18 to 23 have falsified the account willfully and with the intent to defraud, destroy, alter, mutilate and falsify the books of account in their custody”.

19. In the entire complaint, there is not even a whisper as to when and how the applicants have falsified or forged any document. In so far as applicant 5-Pandurang Garje is concerned, he appears to have invited the wrath of the complainant since he appeared as a witness in the civil suit, which ultimately came to be dismissed. I am more than satisfied that if the averments in the complaint are holistically considered, no offence is made out as against the applicants. Be it

noted, that the fact that the applicants herein were not in-charge of Village Panchayat, Hiwarkhed at the relevant time, is irrefutable and uncontroverted.

20. The order of issuance of process suffers from errors more than one. The said order is vitiated by non-application of mind. The learned Magistrate failed to appreciate that the two reports on which he relied exonerate the applicants herein. The learned Magistrate further failed to appreciate that the averments in the complaint read holistically, do not make out a case warranting trial. The continuation of the proceedings against the applicants herein, will be nothing short of gross abuse of the process of law.

21. In view of the discussion supra, the orders impugned are quashed and Regular Criminal Complaint Case 8/2007 is dismissed qua the applicants herein.

JUDGE

adgokar