

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

CRIMINAL APPLICATION (APL) NO. 381 OF 2014
IN
CRIMINAL APPLICATION (APL) NO. 598 OF 2014
IN
CRIMINAL APPLICATION (APL) NO. 602 OF 2014

CRI.APPLN.NO.381/2014.

Prof. Laxminarayan S/o. Jainarayan Rathi,
Aged about 61 years, Occu. : Business,
R/o. S-21, Ganga Nagar, Akola.

.... APPLICANT.

// VERSUS //

1. State of Maharashtra,
Through P.S.O. Narkhed Police Station,
Distt. Nagpur.
2. Municipal Council Narkhed, through its
Chief Officer Shri Siddharth Bhagwan
Meshram, having Office at Narkhed,
Distt. Nagpur.

.... NON-APPLICANTS.

Shri Firdos Mirza, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant No.1/State.
Shri A.Shelat, Advocate for Non-applicant No.2.

WITH

CRI.APPLN.NO.598/2014.

Ashok S/o. Parasram Garate,
Aged about 44 years, Occu. : Service,
R/o. Ward No.14, C/o. Shakti Samant,
Mul, Tq. Mul, District : Chandrapur.

.... APPLICANT.

// VERSUS //

1. State of Maharashtra,
through P.S.O. P.S. Narkhed,
District: Nagpur.
2. Municipal Council Narkhed, through its
Chief Officer Shri Siddharth Bhagwan
Meshram, having Office at Narkhed,
District: Nagpur.

.... NON-APPLICANTS.

Shri M.P.Khajanchi, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant No.1/State.
Shri A.Shelat, Advocate for Non-applicant No.2.

AND

CRI.APPLN.NO.602/2014.

Pramod S/o. Bhauraoji Nikaju,
Aged about 46 years, Occu. : Service,
R/o. C/o. Pappu Arora, Adhyalwale
Layout, Bye-Pass Road, Umrer,
Tah. Umrer, Distt. Nagpur.

.... APPLICANT.

// VERSUS //

1. State of Maharashtra,
through P.S.O. P.S. Narkhed,
District: Nagpur.
2. Municipal Council Narkhed, through its
Chief Officer Shri Siddharth Bhagwan
Meshram, having Office at Narkhed,
District: Nagpur.

.... NON-APPLICANTS.

Shri M.P.Khajanchi, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant No.1/State.
Shri A.Shelat, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 08, 2021.

ORAL JUDGMENT : (Per : Amit Borkar, J.)

1. As all three applications arise out of same First Information Report, we are disposing them by common judgment.

2. The applicants in all three applications are challenging the First Information Report No. 61 of 2014 dated 8th June 2014 registered with the Non-applicant No.1-Police Station for the offences punishable under Sections 420, 468 and 471 read with Section 34 of the Indian Penal Code. The First Information Report came to be registered against the applicants on 8th June 2014 with the accusations that the applicant in Criminal Application No. 381 of 2014 has constructed 611 tenements not as per the agreement annexed to the application at page No.27. It is further alleged that the applicant in Criminal Application No.381 of 2014 has received an amount of Rs.4,04,99,196/- from the non-applicant No.2-Municipal Council and has therefore, cheated the non-applicant No.2 by not constructing as per the agreement and by using substandard material. It is also alleged that when joint inspection was taken by the Chief Executive Officer-Non-applicant No.2,

it was recorded that there were shortcomings in the construction of the applicant and the material used was of sub-standard quality. The allegations against the applicant in Criminal Application No. 602 of 2014 was that the applicant being Junior Engineer had played main role in abetting the crime along with accused No.1-applicant in Criminal Application No. 381 of 2014. The allegation against the applicant in Criminal Application No. 598 of 2014 is that he being the Chief Officer along with other applicants abetted the crime along with applicant in Criminal Application No.381 of 2013.

3. All the applicants, therefore, filed present applications before this Court and this Court on 10th September 2014 issued Rule and granted interim relief thereby staying the impugned First Information Report.

4. The non-applicant No.1 has filed reply on 14th November, 2014 and contested the application. It is stated in the reply that the applicant in Criminal Application No. 381 of 2014 has not constructed as per the specifications in the agreement and the material which was used by the said applicant was of sub-standard quality. In paragraph No.4 of the reply, it is alleged that the applicants in Criminal Application No.602 of 2014 and Criminal Application No. 598 of 2014 have abetted the crime. Therefore, it is prayed that the applications deserve to be dismissed.

5. We have carefully considered the contents of the First Information Report and the other material produced on record by the applicants. The First Information Report accuses the applicant in Criminal Application No.381 of 2014 for having committed the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code. Section 420 of the Indian Penal Code for ready reference, reads as under :

“420. Cheating and dishonestly inducing delivery of property- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

After carefully considering the definition of the cheating as provided under Section 415 and Section 420 of the Indian Penal Code, the dishonest intention at the inception of entering into the contract between the parties is the essential ingredient. From reading of the First Information Report, the allegations against the said applicants is to the effect that the applicant had constructed 611 tenements not as per the agreement entered into between the applicant and the non-applicant No.2 which is on page No.27 of the said application and has received an amount of Rs.4,04,99,196/-. The applicant has placed on record the correspondence between the applicant and the non-applicant No.2. From the said correspondence, it appears that there was notice issued by the applicant to

the non-applicant No.2 invoking arbitration clause and the application was also filed under Section 11 of the Arbitration and Conciliation Act, 1996 in the year 2012. From the correspondence it appears that the applicant was demanding remaining dues of his work which was completed as per the agreement. The impugned First Information Report came to be registered on 8th June 2014 which is after almost seven years from the date of execution of the agreement and after six years of the occupation of the tenements holders. During the course of hearing, we called upon the Advocates for the non-applicant Nos. 1 and 2 to ascertain whether there was any complaint made by the tenement holders about the quality of the construction or the material used by the applicant being of sub-standard nature.

We have perused the agreement at page 27 and in particular clause 11 of the said agreement. Clause 11 of the said agreement requires that the applicant should carry out repairs of the construction in case of the defects in the construction. The non-applicant Nos. 1 and 2 have not pointed out that such complaint was made with the applicant within period of six months from the date of completion of the construction.

6. Having considered the contents of the First Information Report against the applicants in Criminal Application No. 602 of 2014 and Criminal Application No. 598 of 2014 wherein there are accusations against the applicants that the applicants being Junior Engineer and Chief Officer,

respectively have abetted the crime of the applicant in Criminal Application No. 381 of 2014. Having considered the said allegations in the First Information Report, we are satisfied that the ingredients of the offences of Section 409 read with Sections 420, 468 and 471 of the Indian Penal Code are not made out against the said applicants. It is also pertinent to note that there is neither any departmental enquiry initiated against both the applicants nor there is any show cause notice issued to them.

7. We have also gone through the contents of the First Information Report in the context of the allegations as regards the commission of the offences under Sections 468 and 471 of the Indian Penal Code. After having carefully considered the clauses in the First Information Report, we do not find any averments in the First Information Report against all three applicants which *prima-facie* make out case of fulfillment of the offences under Sections 468 and 471 of the Indian Penal Code.

8. We are satisfied that *prima-facie* the allegations in the First Information Report do not constitute averments alleged against all the three applicants. We, therefore, are satisfied that continuation of the proceedings against the applicants would amount to abuse of process of the Court. The present case is squarely covered by clause (1) of paragraph No.102 given in the judgment in the case of *State of Haryana Vs. Bhajan Lal*, reported in **1992 Supp(1) SCC 335**.

9. We, therefore, pass the following order:

First Information Report bearing Crime No. 61 of 2014, dated 8th June 2014, registered with the non-applicant No.1-Police Station for the offences punishable under Sections 420, 468, 471 and 34 of the Indian Penal Code is quashed and set aside.

The Criminal Applications are **allowed** accordingly.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

RRaut..