

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 53 OF 2022

1. Bhushan Pandit More,
Age : 35 years, Occu.: Service,
R/o. Varshi, Tq. Shindkheda,
Dist. Dhule.
2. Pankaj Barku Wadekar,
Age : 42 years, Occu.: Service,
R/o. Plot No. 18, Datta Colony,
Dhule, Dist. Dhule. ... Applicants

Versus

1. State of Maharashtra,
Through its Nardana Police Station,
Nardana, Tq. Shindkheda,
Dist. Dhule.
2. Anti Corruption Bureau
Dhule, Dist. Dhule.
3. Narayan Fakira Bhadane,
Age : 50 years, Occu.: Service,
R/o. Tulshiram Nagar, Deopur,
Tq. & Dist. Dhule. ... Respondents

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Mr. V. B. Patil, Advocate for the Petitioners.
Mrs. P. V. Diggikar, APP for Respondent-State.

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 28th FEBRUARY, 2022**

ORDER :-

1. Both the applicants-accused are seeking quashing of the FIR No. 179 of 2021 (crime no. 36 of 2021) registered with Nardana Police Station, Taluka Shindkheda, District Dhule for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Applicant no. 1 is serving as Taluka Medical Officer, Grade-A at Shindkheda and applicant no.2 is serving as Medical Officer, Grade-A at PHC Center, Nardana. Respondent no. 2 informant is serving as Junior Assistant in Primary Health Center at Nardana. He had done certain work under the NRHM scheme. According to him, a bill of Rs.17,000/- in connection with the work done by him under the said scheme was pending. It has been alleged by respondent no.2-informant that both the applicants have demanded bribe of Rs.1,000/- each to him to sanction the said bill. On 22.07.2017, respondent no.2-informant had approached to the Anti Corruption Bureau, Dhule and lodged a complaint against both the applicants. Accordingly, a trap was arranged. Both the applicants were caught red-handed while accepting bribe of Rs.1,000/- each. Accordingly, the aforesaid crime came to be registered.

2. Learned counsel for the applicants submits that a cheque for an amount of Rs.17,000/- has already been issued in favour of respondent no. 2-informant on 15.06.2021. Learned counsel submits that the honorary payment to respondent no.2 under the NRHM scheme was due only for the months of April to July. The same is Rs.1,500/- per month and the total honorary payment comes to Rs.6,000/- only. In order to sanction bill of the work done under the said scheme, the postage expenses, meeting expenses and other expenses are also required to be paid. Learned counsel submits that accordingly, the cheque of Rs.17,000/- covering the entire amount has been issued and paid to respondent no. 2 on 15.06.2021. Learned counsel submits that respondent no.2 has suppressed these material facts and in view of the same, registration of the crime is nothing but abuse of the process of Court.

3. Learned counsel for the applicants, in order to substantiate his submissions, has brought our attention to various annexures to the application. Those annexures are not part of the investigation papers. We are not inclined to entertain this criminal application by considering the extraneous material placed before us along with the criminal application.

4. Learned counsel for the applicants, on the basis of the extraneous material, has pointed out the proposed defence of the applicants-accused. Learned counsel for the applicants-accused has vehemently submitted before us that a false crime has been registered against both the applicants who are Medical Officers. Learned counsel submits that both the doctors are highly qualified, having unblemished service record. There is no possibility of making demand of Rs.1,000/- to clear the bill submitted by respondent no.2. It is further submitted that the documents submitted at pages 35 to 39 and pages 24 to 27 of this application are pertaining to the record of the Primary Health Center, which is a public record and the same can be relied upon.

5. We have also heard learned APP for the respondent State.

6. In the case of **State of Haryana and Others Vs. Bhajan Lal and Others**, reported in *1992 Supp. (1) SCC 335*, the Supreme Court has carved out the exceptions to the general rule, wherein the inherent powers under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to

secure the ends of justice. In para 102 of the judgment, the Supreme Court has carved out the said exceptions. Para 102 is reproduced herein below:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
4. *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

7. In the case of ***State of Odisha Vs. Pratima Mohanty and others*** [Criminal Appeal Nos.1455-1456 of 2021 decided on 11.12.2021], the Supreme Court in paragraph no. 6.2 has made following observations :

“6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

8. In the instant case, learned counsel for the applicants is insisting us to conduct a mini trial considering the proposed defence

of the applicants. Furthermore, learned counsel for the applicants is also insisting to make an observation about false allegations made against both the applicants.

9. In the instant case, there are allegations about demand of bribe to clear the honorary payment of respondent no.2-informant in connection with the work done by him under the NRHM scheme. At Exhibit "E" (pate 28) both the applicants have submitted their representation to the Chief Secretary, Public Health Department, Mantralaya, Mumbai, wherein reference has been given as to how the cheque for an amount of Rs.17,000/- has been issued. It further appears that the said cheque of Rs.17,000/- dated 15.06.2021 includes only Rs.4,500/ towards the honorary payment for the month of April, May and June, in addition to Rs.2,500/- towards postage expenses and photocopy expenses. So far as the remaining amount of Rs.10,000/- is concerned, they have spent Rs.1,000/- each out of that contingency bill and as such, they were demanding the said amount to respondent no.2-informant. There is further reference to the noting in respect of the said payment dated 15.06.2021 and further fresh noting in respect of the same payment on 22.07.2021. At this stage, it is not possible for us to conduct mini trial by considering the proposed defence of the applicants. It is for the applicants to establish

their defence before the trial court during the course of the trial. There are no submissions about malafides. We do not find any reason for respondent no.2-informant to make false allegations against two Medical Officers with some oblique motive or out of vengeance. Thus, the allegations made in the complaint does not fall within any of the exceptions as carved out by the Supreme Court in para 102 of the judgment in **State of Haryana and Others Vs. Bhajan Lal and Others** (supra). Consequently, it cannot be said that the criminal proceedings initiated against the applicants are an abuse of the process of the Court. On the contrary, *prima facie* it appears that both the applicants have demanded certain amount and further accepted the said amount. The trap was successful and both the applicants were caught red-handed by the anti corruption team. We find no substance in this criminal application. The criminal application is hereby dismissed.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)