

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2000 OF 2020 IN
CRIMINAL WRIT PETITION NO. 1872 OF 2019

The Chief Executive Officer
Zilla Parishad, Jalna & another

Applicants

Versus

Mohan S/o Balasaheb Wayal & others

Respondents

Mr. P. P. Dama Advocate for the applicants.
Mr. N. T. Bhagat, APP for respondent/State.

WITH
CRIMINAL APPLICATION NO. 984 OF 2020 IN
CRIMINAL WRIT PETITION NO. 1872 OF 2019

Dnyaneshwar Narayanrao Wayal & another

Applicants

Versus

Mohan S/o Balasaheb Wayal & others

Respondents

Mr. S. J. Salunke, Advocate for the applicants.
Mr. N. T. Bhagat, APP for respondent/State.

**CORAM : Mangesh S. Patil &
M. G. Sewlikar, JJ.**

DATE : 14th MARCH, 2022.

PER COURT :

1. These are the applications recalling/ seeking review of the order passed in Criminal Writ Petition No. 1872/2019 on 5th

March, 2020 by a Division Bench of this Court to which one of us (M. G. Sewlikar, J.) was party.

2. It is trite that the Courts would seldom go into academic issue. We think that the present scenario presented by the applicants in review petition is nothing but of academic importance.

3. In a writ petition filed by respondent No. 1, alleging misappropriation in implementation of a National Drinking Water Scheme, a direction was solicited to the police machinery to register a crime and to investigate it. This Court, by the order under review in both these applications, allowed the petition and issued direction *inter alia* to register the crime and to complete the investigation.

4. It is now being alleged that in fact respondent No. 1 had obtained the order under review by practising fraud on this Court. The fact of filing of a proceedings under Section 156(3) of the Code of Criminal Procedure and the order passed by the Magistrate thereon calling upon the respondent No. 1 to obtain a sanction under Section 197 of the Code of Criminal Procedure was not disclosed. This Court, believing in the allegations, was pleased to direct the

First Information Report to be registered and investigation to be carried out.

5. By relying upon following decisions, learned Advocate Mr. Salunke for the review petitioners vehemently submitted and tried to demonstrate as to how fraud vitiates everything and any consequence as a result of the fraud is a nullity.

- i) A. V. Papayya Sastry and others vs. Government of A.P. and others reported in AIR 2007 Supreme Court 1546
- ii) S. P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (dead) by L.Rs. And others reported in AIR 1994 Supreme Court 853
- iii) Ganpatbhai Mahijibhai Solanki vs. State of Gujarat and others reported in AIR 2009 SC (Supp) 986.
- iv) United India Insurance Co. Ltd. vs. Rajendra Singh and others reported in AIR 2000 Supreme Court 1165
- v) Jija Eknathrao Ghurde vs. State of Maharashtra reported in 2021(3) ABR (Cri.) 889

6. Having considered the principles and the submissions of learned Advocate Mr. Salunke, admittedly, pursuant to the order under challenge, not only the First Information Report was registered but even the investigation has been completed resulting in filing of a

charge-sheet under Section 173 of the Code of Criminal Procedure. Assuming for the sake of arguments that respondent No. 1 had obtained the order without disclosing the fact of the Magistrate directing him to obtain a previous sanction, once offence was registered and has resulted in filing of charge-sheet, everybody is entitled to assume that the Investigating Officer has found substance in the allegations and even he can justify them on the basis of evidence collected by him. If such is the supervening event, irrespective of the fact whether or not the order under review was obtained by not disclosing some material facts, that is of no consequence. In the process of examining whether the order was obtained by practising fraud, we do not intend to encroach upon the powers of the Criminal Court for examining veracity or otherwise of the allegations based upon the material collected by the Investigating Officer. It would surely be of mere academic interest.

7. There is one more reason for us not to cause any interference. As can be seen, though the fact regarding passing of the direction by the Magistrate in a proceedings under Section 156(3) of the Code of Criminal Procedure was not disclosed in the writ petition, still, the present petitioners/applicants who have filed these

applications were made party to that writ petition. It is a different matter that the order does not disclose if any notice was issued to them and they were heard. We merely intend to point this out because had the respondent No. 1 really intended to practice fraud, he would have taken care not to make the present applicants party to that petition. He cannot be attributed with a premeditation that the Court would not issue any notice to them before passing the order.

8. For all these reasons, though in a given case there could be some enquiry and investigation into the allegations of fraud having been practiced upon the Court, the supervening event peculiar to the matter in hand clearly discloses that such a scrutiny in this proceedings is nothing but of academic importance. There is no merit in the applications. It would always be open for the applicants to resort to an appropriate remedy before the Criminal Court. Both the applications are dismissed.

9. Pending application, if any, stands disposed of.

(M. G. SEWLIKAR)
Judge

(MANGESH S. PATIL)
Judge