

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1299 OF 2021

SARIKA PRALAHADSING PARDESHI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. D. S. Bagul, Advocate for applicants.

Mr. R. V. Dasalkar, APP for respondent No.1 - State.

Mr. N. N. Desale, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

DATE : 27th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

1. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashing the First Information Report (for short "FIR") bearing Crime No.180 of 2021 registered with Dhule Taluka Police Station, Dist. Dhule for the offences punishable under Sections 406, 409, 420 read with Section 34 of Indian Penal Code (for short "IPC").

2. It has been contended that the registration of the present FIR is an outcome of the complaints lodged by applicant No.3 against a

sitting MLA from Dhule Rural Constituency and it is also to give a go-by to the complaints lodged by applicant No.3 with Co-operative Officer. Applicant No.1 is the Gramsevak, who is presently holding charge of village panchayat Vadjai and Balhane, Tq. and Dist. Dhule. From September 2010 till July 2019, he was holding charge of Gramsevak of Village Panchayat, Ajang. During her tenure, the work of construction of toilets was undertaken in the said village pursuant to the guidelines issued by Zilla Parishad, Dhule. Applicant No.2 was the then Sarpanch of the said village and applicant No.3 is the proprietor of Rekha Creators and Developers, who had undertaken the work of construction of toilets under Swaccha Bharat Abhiyan/Mission in the said village. Near about 452 toilets were constructed under the said mission. It is further contended that the Divisional Commissioner, Nashik Division, Nashik by letter dated 29.11.2016 directed the Chief Executive Officer throughout Nashik region that if the beneficiaries agrees, then the fund can be directly transferred in the account of Grampanchayat and the Grampanchayat can utilize the said funds for construction of toilet by appointing an independent agency. The Gramsabha, Ajang then took decision in Gramsabha and appointed applicant No.3 as an agency to construct the toilet. It is then contended that a complaint was made regarding the irregularities and misappropriation in implementing the scheme on 07.11.2017.

Thereafter, the inquiry was ordered by the then Chief Executive Office, Zilla Parishad, Dhule. A report was prepared pointing out that out of 230 toilets, construction of 204 toilets is completed. As regards other toilets are concerned, the status was stated. Thereafter, the remaining work was done and again the Block Development Officer visited the Village Panchayat, Ajang Kashvihir on 17.04.2018 and it was pointed out that construction of only one toilet is incomplete. In spite of such report, it appears that complainant Dinesh Namdev Mali approached this Court in Criminal Writ Petition No.548 of 2018 and sought direction to register crime against the applicants. The said writ petition came to be dismissed on the ground that the petitioner has alternative efficacious remedy under Section 156(3) of Cr.P.C.. Thereafter it appears that the said complainant approached learned Judicial Magistrate First Class by filing Regular Criminal Case No.695 of 2018. Learned Judicial Magistrate First Class, Dhule rejected the prayer for giving directions under Section 156(3) by order dated 04.08.2018 and the matter was posted for verification under Section 200 of Cr.P.C. and then called report under Section 202 of Cr.P.C. The record shows that the investigating agency filed the report and thereafter, the learned Magistrate has issued process against the applicants for the offences punishable under Sections 420, 463, 465, 466, 467, 468 read with Section 34 of IPC. It is then stated that the Block

Development Officer, Panchayat Samiti, Dhule, ignoring the report dated 14.05.2018, has lodged the FIR contending that the present applicants in conspiracy have committed misappropriation of amount of Rs.52,68,000/-. It has been tried to be contended by the applicants that since already cognizance has been taken by the learned Magistrate, the subsequent FIR is violative of fundamental rights enshrined under Article 20(2) of the Constitution of India, as it amounts to double jeopardy. The applicants have, therefore, prayed for quashment of the FIR.

3. Heard learned Advocate Mr. D. S. Bagul for the applicants, learned APP Mr. R. V. Dasalkar for respondent No.1 - State and learned Advocate Mr. N. N. Desale for respondent No.2.

4. The learned Advocate appearing for the applicants have taken us through all the documents which are on record and submitted that in view of the complaint that was made, inspection was done, certain work was incomplete and, therefore, it was got completed and the report regarding the visit of the Block Development Officer on 17.04.2018 would show that in majority of cases, the work is complete. It appears that some remarks show that the name of certain persons is appearing twice. Already the learned Judicial Magistrate First Class has taken cognizance of the offence in the private complaint that was filed by Dinesh Namdev Mali and it is in

respect of the same work. Now, the Block Development Officer has filed FIR with the police station. It amounts to double jeopardy and, therefore, it deserves to be quashed and set aside.

5. Learned APP and learned Advocate for respondent No.2 strongly opposed the application and submitted that now Section 409 of IPC is also added in view of the official complaint/FIR against applicant No.1. She is the government servant and it appears that she has taken part in commission of the crime. The FIR is only against applicant Nos.1 and 2 and it appears that later on applicant No.3 came to be added.

6. At the outset, from the contents of the application, it can be seen that only on the ground that the cognizance has been taken in the private complaint, the applicants intend to say that the subsequent FIR would amount to double jeopardy. The fundamental right enshrined under Article 20(2) reads thus :-

"20. Protection in respect of conviction for offences -

(1)

(2) No person shall be prosecuted and punished for the same offence more than once."

No person shall be prosecuted and punished for the same offence more than once, means the prosecution and the

punishment should have been previously done when the subsequent prosecution is undertaken. Further, this right is not an absolute right. It comes with restrictions. If the offences are distinct, the principle of double jeopardy will not apply. At the same time, we are also required to consider Section 300 of Cr.P.C., which is on the same principles as that of Article 20(2) of Constitution of India. In both the provisions what is contemplated is that the earlier proceedings should have been culminated into punishment and still second time for the same offence, the same person has been tried to be prosecuted. Here, in this case, the said private complaint filed by complainant Dinesh Namdev Mali is still pending and appears to be at initial stage. The Block Development Officer, who has filed the present FIR, is a different person. Another fact to be noted is that in the said private complaint, there are seven accused persons including the present three applicants and the process has been issued against all the accused persons for the offences punishable under Sections 420, 463, 465, 466, 467, 468 read with Section 34 of IPC, whereas the present FIR is against applicant Nos.1 and 2 and later on applicant No.3 came to be added for the offences punishable under Sections 406, 409, 420 read with Section 34 of IPC. That means certain offences are distinct, those have been stated.

7. The case would squarely come within the provisions of Section 210 of Cr.P.C. wherein procedure to be followed when there is a complaint case and police investigation in respect of the same offence is provided. Sub-section (1) of Section 210 prescribes that when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. Such application can be made by the present applicants to the concerned Magistrate before whom the private complaint is filed. Thereafter, as per sub-section (2) of Section 210 of Cr.P.C., if such a report is made by the investigating officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That means the option of clubbing both the cases before one Court is available to the present applicants. Therefore, when alternative efficacious remedy is available so also the filing of the FIR against

the applicants, of which quashment is prayed, does not amount to double jeopardy, this is not a fit case where the application should be allowed by exercising inherent powers of this Court under Section 482 of Cr.P.C. The application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm