

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2688 OF 2022

1. Vitthal Ashroba Toradmal,
Age. 36 years, Occ. Agri.,
 2. Pandurang Ashok Limbure,
Age. 32 years, Occ. Agri.,
 3. Dnyaneshwar Vaijnath Khatik,
Age. 37 years, Occ. Agri.,
All R/o. Hatkarwadi, Tq. Manwath,
Dist. Parbhani.
- Applicants.
[Ori. Accused]

Versus

1. The State of Maharashtra.
Through Sillod Rural Police Station,
 2. Uddhav Limbaji Mane,
Age. 50 years, Occ. Service as constable,
R/o. Police Station Manwat,
Tq. Manwat, Dist. Parbhani.
- Respondents
[Res. No. 2 Ori. Complainant]

Advocate for Applicant : Mr. Avinash N. Barhate Patil
APP for Respondent No. 1 : Mr. S.J. Salgare

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.**

DATE : 29th AUGUST, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] By the present application, filed under Section 482 of Cr.p.c., the applicants are praying for quashing and setting aside, the FIR bearing No. 0197 of 2020 registered at Manwath Police Station, Parbhani under

Sections 379 r/w. 34 of IPC and resultant Criminal proceeding bearing RCC No. 32 of 2021.

A. FACTS :

2] The FIR is lodged by Police Hawaldar bearing Badge No. 161 of Manwat Police Station. The allegations in the FIR are that when he was patrolling alongwith Police Naik Saponi Bansode bearing Badge No. 1241, they received a secret tip from their colleague that one tractor is used for transporting sand, illegally excavated from the canal leading to Godawari River on the way from Hatkarwadi to Rampuri, both of them alongwith two panchas reached near the bridge at 17.00 hours. They saw that two persons were excavating sand from the river and placing it in the tractor, which was approximately half brass. According to first informant the said persons were present applicant Nos. 2 and 3. When asked about the owner, they told the name of the present applicant No.1. After some time, the owner of the tractor – Vitthal Ashroba Toradmal came there. On inquiry, he told that the tractor belongs to him. When asked as to whether he has a licence/royalty of the sand, he replied in the negative. The documents of ownership of vehicle etc. were also not with him. In the tractor, there was about half brass of sand/minor mineral. According to the informant, the valuation of the tractor bearing No. MH-22/AW 2015 was approximately Rs. 4,67,000/- and Sand worth Rs. 3000/- was found in the tractor. Thus, the total muddemal was Rs. 4,70,000/-.

B. Submission of parties :-

3] Heard Mr. Avinash N. Barhate Patil, Advocate for the applicant. Mr. S.J. Salgare, learned APP for the State.

4] Learned counsel Mr. Barhate submitted that the allegations against the present applicant are vague and omnibus in nature. According to him, there was no sand in existence on the spot of incident from where the theft of sand is alleged. The allegation is as such bogus and if the spot of incident is seen, it is improbable that there existed any sand in the drain of which theft can be committed. Therefore, there is no substance in the FIR and the same is liable to be quashed and set aside.

5] The learned counsel for applicant further submitted that there is no independent witness to the incident and all the witnesses are police personnel and therefore, the entire FIR is false and concocted and no such crime is committed by the applicants. Similarly, there is no evidence to connect the accused to the crime in question. The FIR is therefore liable to be quashed and set aside.

6] Learned APP – Mr. Salgare, on the other hand submitted that the applicants have been caught while committing theft of the sand without there being any licence in their possession or payment of royalty on that behalf. Therefore, there is no substance in the application and the same deserves to be dismissed.

ANALYSIS :-

7] In the present case, the allegations are that the applicants were found transporting sand of which they had committed theft from the bank of the canal, for which they had no valid licence and as such, there is no substance in the arguments advanced by learned counsel for the applicants that there was no sand. From perusal of the record, it is revealed that everything has been done by the prosecution following proper procedure, the panchas were called. Proper panchanama was

drawn. The muddemal was also recovered from the vehicle of the applicants. Therefore, there is no substance in the argument that this is a bogus case and no such theft was committed.

8] Perusal of the FIR shows, that when he was patrolling alongwith Police Naik Saponi Bansode bearing Badge No. 1241, they received a secret tip from their colleague that one tractor is used for transporting sand illegally excavated from the canal leading to Godawari River on the way from Hatkarwadi to Rampuri, both of them alongwith two panchas reached near the bridge at 17.00 hours. They saw that two persons were excavating sand from the river and placing it in the tractor, which was approximately half brass. According to first informant the said persons were present applicant Nos. 2 and 3. When asked about the owner, they told the name of the present applicant No.1. After some time, the owner of the tractor – Vitthal Ashroba Toradmal came there. On inquiry, he told that the tractor belongs to him. When asked as to whether he has a licence/royalty of the sand, he replied in the negative. The documents of ownership of vehicle etc. were also not with him. In the tractor, there was about half brass of sand/minor mineral. According to the informant, the valuation of the tractor bearing No. MH-22/AW 2015 was approximately Rs. 4,67,000/- and Sand worth Rs. 3000/- was found in the tractor. Thus, the total muddemal was Rs. 4,70,000/-.

9] Admittedly, the applicants have been caught when they were lifting the sand from the bank of the canal. The applicants could not show the valid licence for lifting the said sand. The vehicle alongwith muddemal was seized, which was lateron released. The fact remains that the applicant did not possess the licence for lifting the sand and as such, we find substance in the argument of learned APP, that the applicants

have no case on merits and the same is liable to be dismissed.

10] In the present case, the applicants have utterly failed to prove that they had a valid licence in possession to lift the sand in question and hence, there is no question of abuse of process of law. No case is made out for exercising our discretion under Section 482 of the Code of Criminal Procedure. There is no substance in the application. The same is devoid of any merit and as such, deserves to be dismissed.

11] In the result, we pass the following order :

ORDER

The criminal application is dismissed.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-