

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1418 OF 2019

Sukhdev Bajirao Desle
Age: 65 years, Occu.: Pensioner,
R/o. Bhrahmin Galli, Pimpalner,
Tq. Sakri, Dist. Dhule

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai.
2. Chief Executive Officer,
Zilla Parishad, Dhule,
Dist. Dhule.
3. Block Development Officer,
Panchayat Samiti, Sakri,
Dist. Dhule.
4. The Superintendent of Police,
Dhule, Dist. Dhule.
5. Police Inspector,
Pimpalner Police Station,
Pimpalner, Tq. Sakri,
Dist. Dhule
6. Hiranman Nahnu Ahire
Age: Major, Occu.: Service,
R/o. Sakri, Tq. Sakri,
Dist. Dhule.
7. Sanjay Sakharam Thakare,
Age: Major, Occu.: Agri.,
R/o. Sakri, Tq. Sakri,
Dist. Dhule.

8. Yogesh Somnath Nelkar,
Age: Major, Occu.: Agri.,
R/o. Sakri, Tq. Sakri,
Dist. Dhule.

.. Respondents

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Mr. N. L. Choudhary, Advocate for petitioner.
Mr. M. M. Nerlikar, APP for Respondent Nos.1, 4 and 5 - State.
Mr. N. N. Desle, Advocate for Respondent Nos.2 and 3.
Mr. L. S. Mahajan, Advocate for Respondent No.6.
Mr. V. H. Dighe, Advocate for Respondent Nos.7 and 8.

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

RESERVED ON : 14-09-2022

PRONOUNCED ON : 24-11-2022

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

1. Present writ petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India as well as the inherent powers under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for directing respondent Nos.1 to 5 to take action/register crime against respondent Nos.6 to 8 for misappropriation of government funds.

2. The petitioner is a retired Block Development Officer and he was posted at Grampanchayat, Pimpalner, Tq. Sakri, Dist. Dhule in the said capacity as Block Development Officer in the year 2000 till 31.05.2005. The petitioner has contended that Zilla Parishad, Grampanchayat Division had sanctioned amount of Rs.15,00,000/-

on 30.09.2004 for construction of drainage. The work was supposed to be completed till 07.06.2005 and accordingly after its completion, the Executive Engineer, Panchayat Samiti had granted completion certificate. Thereafter, the petitioner came to be transferred to Shindkheda and respondent No.6 had taken charge of the said post, which was earlier held by the petitioner. It has been contended that though the work was completed, respondent No.6, who was the then Block Development Officer as well as respondent No.7 - Sarpanch as well as respondent No.8 - the Deputy Sarpanch had prepared some false vouchers in respect of the same work and misappropriated government funds to the extent of Rs.4,87,472/-. It is further contended that respondent Nos.6 to 8 have done various work in Grampanchayat from the government fund between June 2005 till 2011-2012. The resolution dated 19.01.2001 prescribed that 5% of the entire work done by the Grampanchayat from the government fund has to be deposited in the account of the Grampanchayat. Respondent Nos.6 to 8 have not followed the said Government Resolution also and the amount of Rs.12,05,135/- has not been deposited in the account of the Grampanchayat. The District Auditor has also taken objection in respect of the same in the Audit Report. The Extension Officer, Panchayat Samiti, Sakri had issued notice to respondent No.3 and directed action to be taken against respondent No.6 on 14.06.2017.

The explanations were called from respondent Nos.6 to 8. When it was not responded, the petitioner had made various representations since 2016-2017 to respondent Nos.1 to 5, so also a complaint was made for registration of the crime, however, it has not been responded by respondent Nos.1 to 5. Hence, this petition.

3. Heard learned Advocate Mr. N. L. Choudhary for the petitioner, learned APP Mr. M. M. Nerlikar for respondent No.1, 4 and 5 - State, learned Advocate Mr. N. N. Desle for respondent Nos.2 and 3, learned Advocate Mr. L. S. Mahajan for respondent No.6 and learned Advocate Mr. V. H. Dighe for respondent Nos.7 and 8.

4. The learned Advocate for the petitioner has taken objection through various documents which have been produced on record, especially the Government Resolution issued on 19.01.2001, Notice issued on 14.06.2017, the part of the audit report, communication between Block Development Officer, Panchayat Samiti, Sakri and respondent No.6 dated 01.02.2019 asking his explanation for the vouchers and other documents from 2005-2012 and the similar notices to respondent Nos.7 and 8 also, the complaint filed by the petitioner to Police Inspector, Pimpalner Police Station dated 09.09.2018, 03.10.2018, 10.12.2018, a complaint application to the Collector, Chief Executive Officer and Hon'ble the Ministers etc..

It has been then submitted that in spite of persuasion by the petitioner when respondent Nos.1 to 5 are not responding and there is evidence to show that huge government money has been misappropriated, definitely, directions deserve to be issued to respondent Nos.1 to 5 for registration of the offence against respondent Nos.6 to 8.

5. Per contra, the learned APP representing respondent Nos.1 , 4 and 5 submitted that inquiry has been made on the basis of the complaint application filed by the petitioner to A.P.I., Pimpalner Police Station. It has been revealed that there was an inquiry by Panchayat Samiti, Sakri as well as Zilla Parishad, Dhule and in the said inquiry, it has not been transpired that there is any misappropriation of the government amount. So also on various occasions, the petitioner - complainant was called to police station and he was directed to produce any document which he might be possessing to support his contentions, yet he did not appear. The amount of Rs.4,87,472/- has been spent from the Gramnidhi and not under the head the petitioner intends to agitate. Further, the present petitioner had made communication to Chief Executive Officer, Zilla Parishad, Dhule seeking permission to prosecute respondent Nos.6 to 8 and he was then informed by this concerned authority that since there is no misappropriation his alternative

prayer for sanction or allow him to file complaint under Section 200 of Cr.P.C. or under Section 156(3) of Cr.P.C. was rejected. The inquiry on the complaint application filed by the petitioner was completed on 13.09.2019 itself and a report was given to District Superintendent of Police, Dhule for disposal of the said complaint application on 13.09.2019. The documents to that effect have been produced for the perusal of this Court.

6. Learned Advocate for respondent Nos.2 and 3 also submitted the same facts and in categorical terms, it is stated that there is no such offence, as tried to be posed by the petitioner, has been transpired in the inquiry that was held on behalf of respondent No.2. Learned Advocate for respondent No.6 as well as learned Advocate appearing for respondent Nos.7 and 8 have also made some submissions and respondent Nos.6 to 8 claimed innocence.

7. In view of the fact that all the facts have already been narrated, they are not reproduced. Though there appears to be a complaint and representation by the petitioner to the respective authorities, when inquiry in the department *inter se* has resulted in finding out that no misappropriation of the government amount has been made, then there is very less scope for this Court to exercise its powers either under Constitution of India or under Cr.P.C. If there would have been no inquiry at all, the thing would have been

different. But after the inquiry, it has been concluded by the concerned department that its funds, consequently the government funds, have not been misappropriated and respondent Nos.6 to 8 were able to account for or give explanation to any of the shortcomings, which were earlier noted. There is no scope for giving directions to respondents Nos.1 to 5 for lodging a report. The writ petition stands dismissed.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm