

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.812/2018

1. Kashinath S/o Rangnath Gadekar,
aged about 58 Yrs., Occ. Retired,
R/o Washim.
2. Dinkar S/o Vishvanath Nage,
aged about 51 Yrs., Occ. Service,
R/o Mangrulpir, Dist. Washim.
3. Vijay S/o Uttamrao Patil,
aged about 58 Yrs., Occ. Service,
R/o Mangrulpir, Dist. Washim. ... Applicants.

- Versus -

1. State of Maharashtra,
through P.S.O., Police Station,
Mangrulpir.
2. Shri K.K. Gour,
the then in charge Principal District
and Sessions Judge, Washim. ... Non-applicants.

AND

CRIMINAL APPLICATION (APL) NO.772/2018

Samadhan S/o Sopan Bhagat,
aged about 36 Yrs., Occ. Contractor,
R/o Sungaon, P.S. Asegaon,

Tq. Mangrulpir, Dist. Washim.

... Applicant.

- Versus -

1. State of Maharashtra,
through P.S.O., P.S. Mangrulpir,
Tq. Mangrulpir, Dist. Washim.

2. Shri K.K. Gour,
Principal District & Sessions Judge,
Washim, Dist. Court, Washim,
Tq. and Dist. Washim.

... Non-applicants.

Mr. R. K. Tiwari, Advocate for the applicants.

Mr. M.J. Khan, A.P.P. for non-applicant Nos.1 and 2.

..(in Criminal Application (APL) No.812/2018)

Mr. J.B. Gandhi, Advocate for the applicant.

Mr. M.J. Khan, A.P.P. for non-applicant Nos.1 and 2.

..(in Criminal Application (APL) No.772/2018)

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 11.7.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent.

2. These are the cases wherein the then learned In-charge Principal District and Sessions Judge, without thinking of any consequences and being oblivious of the responsibility entrusted to him, filed the complaint against the applicants and others making serious allegations of misappropriation and criminal breach of trust. The complaint was made by none other than the custodian of justice in a district and so the police was bound to register offences against the persons shown as offenders by the complainant. Accordingly, offences punishable under Sections 406, 409, 417 and 468 read with Section 34 of the Indian Penal Code against the applicants in Criminal Application (APL) No.812/2018 and one more applicant in Criminal Application (APL) No.772/2018 came to be registered at Police Station Mangrulpir.

3. Mr. Tiwari, learned counsel for the applicants in Criminal Application (APL) No.812/2018 and Mr. J.B. Gandhi, learned counsel for the applicant in Criminal Application

No.772/2018 both submit that there is not even a whisper of allegation against these applicants that these applicants had utilized any government money for their own personal benefit or for the personal benefit of the person not entitled to take the same. They further submit that only allegation made against these applicants is that these applicants utilized for some other purpose the amount of Rs.23,87,172/- which was sanctioned partly for construction of closed cubicals for accused having one way glass, sanitation facilities and docks, and partly for some other work relating to court establishment at Washim. The other allegation is that these applicants in making such construction did not utilize the entire amount of Rs.23,87,172/- and spent only amount of Rs.17,89,538/- while returning the remaining amount of Rs.5,97,634/-.

4. There is no allegation of any forgery or creation of false documents on the part of any of the applicants.

5. The allegations referred to above do not state anywhere that while utilizing the sanctioned amount for a purpose other than the one sanctioned, the applicants pocketed or allowed to pocket some other person the said amount and thereby committed misappropriation of government money or committed criminal breach of trust by entrusting the money to some unauthorized person. There is also no allegation of doing any act by any of the applicants with dishonest intention while utilizing the sanctioned amount. Even during the course of investigation, no material has been admittedly found showing any dishonest intention on the part of any of the applicants.

6. With such nature of allegations and no material having been found, *prima facie*, pointing out dishonest intention of the applicants, we are of the opinion that any further continuation of the trial would be nothing but abuse of process of law.

7. Before parting with the judgment, we would like to place on record our disapproval to the action of the learned In-charge Principal District and Sessions Judge, as he was then, in hurriedly filing a criminal complaint against these applicants. Admittedly, the then learned In-charge Principal District and Sessions Judge did not take any prior permission of the High Court nor did he seek any approval of the High Court to any draft complaint. In such matters, it was necessary for him to first inform the High Court that the Contractor and the Engineers, by not utilizing the sanctioned money for the purpose for which it was sanctioned, had committed some wrong, and seek directions of the High Court regarding the manner in which he should have proceeded in such a case but that is not done by the then learned In-charge Principal District and Sessions Judge. We hope that in future he would be careful in his actions.

8. In the result, we find that applications deserve to be allowed and they are allowed in terms of prayer clause (a) of the

Criminal Application (APL) No.812/2018, which reads as follows:-

“a) Quash the FIR No.223/2018, registered by Mangrulpir Police Station under Sections 406, 409, 417, 468 r/w 34 of IPC on 03.07.2018 and to quash R.C.C. No.194/2019 pending on the file of JMFC, Mangrulpir, Dist. Washim.”

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Tambaskar.

Signed By: NILESH VILASRAO
TAMBASKAR

Private Secretary
Date: 12.07.2022 15:01