

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 832 of 2021

Jagannath Bansilal Rathi
Age 65 years, Occ. Business,
R/o. Loni, Tq. Rahata,
District Ahmednagar.

...Petitioner

Versus

The State of Maharashtra,
Copy to be served upon Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.

...Respondent

AND

Criminal Writ Petition No. 512 of 2022

Sameer s/o Anandrao Dhamale
Age 68 years, Occ. Retired &
Legal Practitioner,
R/o. Chintamani Nagar Part-3,
Mahesh Society, Bldg. No.A-1,
Flat No.5, Bibewadi, District Pune.

...Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department, Maharashtra State,
Mantralaya, Mumbai.
2. Police Inspector,
Kotwali Police Station,
Ahmednagar, Tq. & Dist. Ahmednagar.

...Respondents

Advocate for Petitioner in WP-832/2021 : Mr. V. D. Hon, Senior Advocate i/by
Mr. Ashwin V. Hon

Advocate for Petitioner in WP-512/2022 : Mr. Rahul B. Temak
APP for State/Respondent : Mr. S. W. Mundhe

CORAM : KISHORE C. SANT, J.
RESERVED ON : 12th DECEMBER, 2022.
PRONOUNCED ON : 16th FEBRUARY, 2023.

JUDGMENT :

1. Both the petitions are filed challenging the orders passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.224/2018 and Criminal Revision Petition No.3/2019 dated 05.07.2021 and 05.03.2022 respectively.

2. The Writ Petition No.832/2021 is by the original accused no.24 and the Writ Petition No.512/2022 is by the original accused no.21, in Crime No.134/2008 registered with Kotwali Police Station, Ahmednagar for the offences punishable under Sections 420, 406, 407, 408, 409, 465, 467, 468, 471, 477(a) read with 34 of the Indian Penal Code. On the basis of said crime, the investigation was carried and the charge-sheet is filed. Now the proceeding bearing R.C.C. No. 369/2012 is pending in the Court of learned Judicial Magistrate First Class, Ahmednagar.

3. Both the petitioners had challenged the order dated 29.10.2018 passed by the learned Chief Judicial Magistrate, Ahmednagar rejecting the application for discharge filed by these petitioners. Since both the petitions are arising out of the same proceedings, petitions are taken up together.

4. Heard the parties. Both the matters are taken up for final disposal by consent of the parties.

5. The facts in short are as below :

In the year, 2006 there was a drought situation in Ahmednagar District. Because of the drought situation, the Collector, Ahmednagar issued an order dated 25.04.2006, thereby acquired all the Government water supply schemes. Trucks, tankers, tippers and all the vehicles needed for supply of water. Because of this no vehicles/ tankers were available to supply water to the Village. It was therefore decided to call tender for supply of water. The Collector Ahmednagar pursuant to that called for tenders for the said work. The tender of one "Aamdar Shri. Radhakrishna Vikhe Patil Sahakari Transport Wahtuk Sanstha Limited, Pravaranagar, Tq. Rahata" (Hereinafter referred to as 'Society') was accepted. The work of water supply was to be done by following procedure as per policy decision in the Government dated 03.02.1999. The vehicles were to maintain the log book. The registers were to be

maintained about the trips under taken for supply of water etc. The responsibility was given to the Block Development Officer for taking the entries from the log book etc. by authorizing the persons. However the log book was to be verified by the person authorized by the Collector. The speedometer of the vehicles was to be maintained in working condition etc.

6. Pursuant to acceptance of the tender agreement was executed between the Collector and the Society. The Society accepted to supply the water by tankers having capacity of 10,000 ltr. And 12,000 ltr. on certain terms and conditions. The expenses of petrol and diesel was were to be borne by the Society. The rent was to be charged from the date on which the actual supply would start. The rent will be minimum for 150 Km. completed into 24 hrs. Further condition was that the log book will be maintained by the Officer authorized by the Block Development Officer. Thus, all the conditions were incorporated in the agreement and the supply was started.

7. Pursuant to the order by the Collector and the agreement entered into between the Society and the Collector, Tahasildar issued communication to the Block Development Officer, Panchayat Samiti, Ahmednagar, directing to keep clear vigilance on the work, by letter dated 10.05.2006. The Manager of the Society even prior to the work of supply

had given letter dated 12.08.2006 requesting not to supply more diesel than permissible as the vehicle owner does not accept more amount if paid for diesel.

8. Later on, the Block Development Officer lodged the FIR with Kotwali Police Station bearing FIR No.134/2008 dated 01.05.2008 for the offences under the various Sections, wherein these petitioners are shown to be accused. In the FIR, it is alleged that during the period from 01.04.2006 to 31.01.2007, the work of supply of water was given to the Society. The Block Development Officer sanctioned the work. The Zilla Parishad had made the funds available. The water was to be taken from Vasant-Tekdi. The allegation so far as the petitioner/accused no.24 in Writ Petition No.832/2021 is that he was the Chairman of the Society. The rent of the tanker was decided on the basis of per day as per Kilometers. In collusion with others, more trips are shown in the log book. There is variance between the actual trips taken by the tanker for supplying of water and found to be lesser than shown in the log book, thereby the amount of Rs.68,23,465/- is shown for expenses for diesel. Two tankers bearing no. MWA1929 and MCA2386 have not made a single trip. These tankers were not used for supply of water to any of the villages, still the log book was prepared in respect of these two vehicles and an amount of Rs.3,29,075/- was taken. Similar allegation is made in respect of tanker bearing no. MH17C5171. The speedometer of some of the

vehicles was not in working condition. It is alleged that for this purpose the bogus documents were created by creating bogus seal of the Gram Panchayat, Gram Sevak, Sarpanch etc. A supply was stopped at Bhorwadi Village. However even one month thereafter, the trips were shown at Bhorwadi. The similar is the case in the case of other villages. They have prepared bogus bills from following villages by preparing bogus rubber stamps. The irregularity was as given below in information chart, wherein the first column shows vehicle number and second column is of name of the Village, where water is shown to have been supplied and the investigation was found that it is not supplied as per the allegations.

Sr. No.	Vehicle No.	Name of the Village
1	MH16-B3225 MH16-B3125	Khempa
2	MH16-B3225	Bhorwadi
3	MTO6741	Sandav
4	MHP1624	Ranegan & Aramagaon
5	MTD2694	Gunwadi and Watephal
6	MWA6614	Pargaon Maula
7	MTS6991	Sandva & Pipalgaon Malvi
8	MTO6575	Dogargan
9	MH17-A7362	Ghospuri
10	MH12-R8367	Dahigaon

9. As regards the petitioner/accused no.21 in Writ Petition No. 512/2022, the allegations are that he was working as Block Development Officer in Panchayat Samiti. He failed to keep proper vigilance. He has

committed following defaults :

- (i) He did not obtain fitness certificate of the vehicle from the Contractor.
- (ii) He did not verify as to whether a proper log book is maintained by the driver.
- (iii) He has not verified and certified the tankers, which were used.
- (iv) He did not check whether the speedometer of the vehicle was in working condition.
- (v) No employee was deputed to see whether the water was taken in the tanker.
- (vi) He did not verify that the Gram Sevak have signed on the log book.
- (vii) He did not verify the kilometers done by the vehicle and the diesel used for the same.
- (viii) He has not issued the diesel receipts to the drivers.
- (ix) No register was kept about the diesel.
- (x) No report is prepared showing as to how many kilometers one tanker has run? and to which village they supplied water, the place where the water was taken from.
- (xi) The diesel was supplied to the tanker without verifying kilometers etc.
- (xii) The account of the receipt book is not maintained.

(xiii) Without verifying the log book, the record is taken for the diesel and passed the bills of the petrol pump.

. In this case also, it is mentioned that he has not verified the actual trips undertaken by the tankers etc.

10. Both these petitioners filed application below exhibit-147 in the Court of learned Additional Chief Magistrate, Ahmednagar seeking discharge on various grounds. The same came to be rejected by order dated 29.10.2018. The petitioners therefore approached the learned Sessions Judge, Ahmednagar by filing Revisions. The petitioner in petition no.832/2021 filed Revision Application No.224/2018, whereas the petitioner in petition no.512/2022 filed a Revision Application No.3/2019, which were decided by the learned Sessions Judge by orders dated 05.07.2021 and 05.03.2022 respectively. Thus both these petitioner are now before this Court.

11. The learned Senior Advocate for the petitioner in petition no.832/2021 argued that the accused no.24 happens to be Chairman of the Society, who had filled in the tender. The tender was accepted and by following procedure work order was given to the Society. Thereafter the agreements were duly signed by the parties. There is no illegality. The work was carried as per the scheme. The work of responsibility to

maintain the log books etc. is with the authorities. The registered log books are in custody of the authorities. The cost of fuel is given only after satisfaction of the authorities that the diesel is utilized. Even the control of the vehicle after those were supplied. The log book is not filled in by the Society. He submits that in fact it is this Chairman, who had informed the authorities to keep check on the activities by pointing out a letter dated 28.03.2006. Wherein he himself had requested the B.D.O., accused no.21, not to allow the bills if it is found in excess. The diesel be supplied by considering the mileage of the vehicle to be 4 Kms. per liter. He submits that as per Clause No.9 of the Agreement, the record was to maintain by the Office of the B.D.O. as per Clause No.23. The Society had no objection to disburse the amount through the Chief Executive Officer, Zilla Parishad. In support of his contention, as per the order he pointed out Clause No.10, 12 and 15 of the Work Order. Clause No.10 states that it would be responsibility of the B.D.O. to keep the log books and other entries. As per the Clause No.12, Collector was authorized to verify the log books. Clause No.15 states that to keep this speedometer in running condition is the responsibility of the transporter. He submits that thus he was not responsible to any of the acts alleged by the complainant. He further submits that even the Tahsildar had informed the B.D.O. that the log books are maintained by the B.D.O. Thus ultimately his submission is that the Chairman cannot be

held liable for any of the breach of the acts. The Chairman is unnecessarily made to face the prosecution. Both the Courts that is trial Court as well as Revisional Court have not considered this main aspect. The Court below has failed to consider with the from the work was given as per the scheme of the Government, as per agreement, it was the authority of the responsible. Further since the Government Officers are also made accused, which clearly show that it is Government Officer, who is responsible for all the acts. There is nothing to show that this petitioner has received any amount. It was necessary for the Court to see as to what exactly role assigned to the Chairman of the Society.

12. Mr. Temak, learned Advocate for the petitioner argued in petition no.512/2022, stating that it was ultimately responsibility of the Collector to see that the entire work is carried as per the scheme of the Government by pointing the Clauses in the Government decision dated 24.01.2006. He invites attention to Clause No.8 of the said decision, wherein it is stated that it is the responsibility of the Collector to keep stick control over the activities. It was necessary for the Collector to verify all things and only thereafter to submit the bills. In this case all the bills were submitted, the amount was disbursed and thus it was the Collector was satisfied that everything was done properly. He further pointed out even the CEO, ZP had directed to the BDO by communication dated

03.01.2007 that except few items, he had no objection to clear the bills. The petitioner since was working as BDO, he has performed his duties strictly from the scheme. He had even issued show cause notice to the junior assistant, water scarcity department, Panchayat Samiti directing to take proper care, when the efficiencies were observed by the petitioner. He had also issued notice to one Darkunde directing him to submit the report about the trips, the clearness of the vehicle. Similar notice given to all the Gram Panchayat. He lastly submits that all the bills were clear after clearance given by the Superior. No fault can be found and certainly not a criminal charge.

13. After hearing both the petitioners, the learned APP argued opposing both the petitions. He submitted that the authorities were only to keep a check and a verify the log books etc. However as a matter of fact, the log books are with the truck drivers, who are working for the Society or for their owners, who are given the work by the Society. No responsibility can be shirked. The FIR was registered after the report by the Commissioner, Nashik was received. The report was prepared on the basis of enquiry conducted by the Office. The persons who were found having breach the conditions or have committed an offence against them, the FIR is lodged. Only after due verification of their work and therefore the FIR is lodged against Officers of the Department or against

owners, drivers and the Society. From the agreement, he points out Clause No.5 that the Society had undertaken the responsibility to spend the amount of diesel, petrol, maintenance, driver, cleaner etc., required for the implementation of the scheme. In Clause No.14, it was clearly undertaken that since the water is to be supplied depending upon need and necessity of village, the number of trips will be decided by the Society. Even the responsibility to keep the speedometer of the vehicle in working condition was also of the Society. Thus he submits that everything was in fact under the control of the Society, the authorities were only to verify and keep a watch on the activities and thus in this case, the offence is registered against the Society and also against the authorities since both have failed to do their duty or failed in their duty. He submits that there are statements recorded of various persons during the course of enquiry, it is only thereafter the report was prepared. He produced on record the copy of report, wherein statements of various persons have been recorded. Including the villagers, Gram Sevak, Sarpanch from all the villages and it is only after verification that all the accused have failed in their duty or committed breach, the FIR is lodged. There are also panchnamas recorded during the process of enquiry. Certain instances are pointed out where the capacity of the tank of the truck 60 liters. However he has filled in 160 liters in one bill. He submits that when such instances are pointed are noticed in some cases in the

log books. There are no signatures of the concerned Gram Panchayat any Officer of the Gram Panchayat, still the bills are sanctioned. This clearly establishes that the Officers and the Society in connivance with each other have committed this illegal act and have deceived the Government.

14. The learned Senior Counsel in rejoinder submitted that it is the owner and driver of the vehicle, who are in fact responsible for keeping the proper log books and to keep the audit etc. Mr. Temak, learned Advocate also submitted that there is no audit report on record. The learned APP countered this argument by submitting that the fabricated document does not require any audit.

15. Thus considering the submissions, this Court has to see whether the order passed by the learned Sessions Judge is correct and whether it suffers from any illegality calling for interference at the hands of this Court. The learned Sessions Judge in Criminal Revision Application No.224/2018 that is filed by the Chairman, has observed that it was the Society, which was liable to maintain the log books of the vehicle etc. There is sufficient material on record to proceed against petitioners. This satisfaction was recorded on going through the following judgments cited before this Court: (i) first judgment reported in AIR 1972 SC 545 in the

case of **Century Spinning and Manufacturing Co. Ltd. Vs. State of Maharashtra**; (ii) the another judgment reported in AIR 2002 SC 564 in the case of **Dilawar Balu Kurane Vs. State of Maharashtra**.

. In Revision Application No.3/2019, the learned Sessions Judge has observed that there are number of bills issued by the petitioner, where by the vehicle owners and drivers received huge and excess amount and there are series of such acts, wherein the petitioner is involved. The Court considered the judgment reported in 2013(2) B Cr.C.220 in the case of **Shri. Vivek S/o Yashewant Khandekar Vs. The State of Maharashtra**.

16. This Court on the above discussion, finds that there is material on record sufficient to proceed to frame charge against the petitioners. At this stage, the Court is only confined to the aspect to see whether there is sufficient material on record to proceed with the matter. On going through the record and the charge-sheet, it is clearly found that there is sufficient material. This Court finds that the learned trial Court and the learned Sessions Court has rightly considered the application for discharge and has rightly rejected the application of the petitioners. No interference therefore is called. This Court finds that the learned Sessions Judge has not committed any mistake. There is no perversity in the order and thus no interference is required, while exercising the

powers under Section 482 of Cr.P.C. and under Articles 226, 227 of the Constitution of India. Thus, both the petitions are devoid of merit and the same deserve to be dismissed. Hence, both the Writ Petitions are dismissed and disposed off accordingly.

[KISHORE C. SANT, J.]

NAJEEB..