

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.255 OF 2021**

Syed Farooq s/o Syed Mohemmed Hashmi      **...PETITIONER**

**VERSUS**

The State of Maharashtra & anr.      **...RESPONDENTS**

.....

Mr. V.D. Gunale, Advocate for petitioner  
Mr. M.M. Nerlikar, A.P.P. for respondent No.1.

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**WITH**

**CRIMINAL WRIT PETITION NO.510 OF 2019**

Chandrakant Narayanrao Salunke      **...PETITIONER**

**VERSUS**

The State of Maharashtra & anr.      **...RESPONDENTS**

.....

Mr. V.D. Gunale, Advocate for petitioner  
Mr. M.M. Nerlikar, A.P.P. for respondent No.1.

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**CORAM : SMT. ANUJA PRABHUDESSAI AND  
R.M. JOSHI, JJ.**

**DATE : 30th JANUARY, 2023**

**P.C. :**

With the consent of learned counsel for rival parties,  
heard finally at the stage of admission.

2. These petitions are filed under Article 226 of the

Constitution of India and Section 482 of the Code of Criminal Procedure to quash the First Information Report No.14/2019, registered with Jalkot Police Station, District Latur and R.C.C. No.135/2019, pending on the file of learned Judicial Magistrate, First Class, Udgir, District Latur for offences punishable under Sections 465, 468, 471, 420 and 120-B of the Indian Penal Code.

3. Heard learned counsel for the petitioners and learned A.P.P. for the State. We have perused the record and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the allegations in the First Information Report and the other material collected in the course of the investigation disclose cognizable offences against these petitioners.

4. The petitioner No.1 Syed Farooq Hashmi was working as Sectional Engineer, Sub-Division, Jalkot and the petitioner Chandrakant Salunke was the Deputy Engineer, Minor Irrigation at Udgir. In the year 2007, a percolation tank was constructed at village Mangrul through the agency – Labour Co-operative Society, Udgir (hereinafter referred to as the said Agency). The work of the said percolation tank was completed by March 2007. The respondent No.2, who was working as Deputy Engineer, Minor

Irrigation, lodged the First Information Report against both these petitioners, alleging that the measurements carried out by the petitioner Hashmi were incorrect. It was further stated that the petitioner Salunke has cleared the bills even though the work of overflow outlet of the percolation tank was not completed. It is stated that, a bill was prepared for excess amount which was sanctioned by the petitioner Salunke and paid to the said Agency. Allegations were made that both the petitioners had misappropriated an amount of Rs.96,417/-.

5. It is pertinent to note that, the construction work of the percolation tank was completed in the month of March 2007 and the bills in respect of the said work were also sanctioned and paid in the year 2007. The First Information Report was lodged in the year 2019 on the basis of fresh measurements taken in the year 2017. It is also pertinent to note that, on the basis of the said measurement report prepared in the year 2017, a departmental enquiry was conducted against the petitioner Hashmi for showing incorrect measurements and approving bills for excessive amount on the basis of the false report. He has been exonerated of the charge of misappropriation of the amount. The First Information Report lodged in the year 2019 relates to the same set of facts and circumstances. In view of exoneration in the departmental enquiry,

the charge of misappropriation otherwise would not sustain since it entails a higher standard of proof. Reliance is placed on recent three Judge Bench decision of the Hon'ble Supreme court in Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, E.O.W., C.B.I. (2020) 9 SCC 636.

6. Be that as it may, the crux of the accusation is that the petitioners have sanctioned the bill for work which was not completed. The said charge is based on the measurement report. The report does not give details of construction but only gives valuation on the basis of the measurements. It is on the basis of the valuation done after 11 years, it is alleged that the bill raised in the year 2007 is excessive and on this basis it is alleged that the petitioners have misappropriated an amount of Rs.96,417/-.

7. In the absence of any material on record to indicate that the petitioners had committed forgery within the meaning of Section 463 of the Code of Criminal Procedure, the charges under Sections 465, 468 and 471 would not sustain. There is also no material on record to suggest that the petitioners herein had induced or deceived any person with dishonest or fraudulent intention. Hence, in our considered view, the allegations made in the First Information report as well as the other material collected in the course of the

investigation, do not disclose offences as alleged. In such circumstances, continuation of the proceedings would be sheer abuse of the process of Court.

8. In the result, both the Criminal Writ Petitions are allowed. The First Information Report No.14/2019, registered with Jalkot Police Station, District Latur and R.C.C. No.135/2019, pending on the file of learned Judicial Magistrate, First Class, Udgir, District Latur for the offences punishable under Sections 465, 468, 471, 420 and 120-B of the Indian Penal Code are hereby quashed.

**(R. M. JOSHI, J.)**

**(SMT. ANUJA PRABHUDESSAI, J.)**

fmp/-