

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

CRIMINAL APPLICATION NO. 1125 OF 2020

- 1] Girdharilal Madhavdas Ramrakhya,
Age: 57 years, Occu: Business,
R/o: At/ Post. Sindhi Colony, Dondaicha,
Tal. Shindkheda, Dist. Dhule.
 - 2] Santosh Sitaram Jaiswal,
Age: 43 years, Occu: Business,
R/o: SF-9, Swami Apartment
Loins School Road, Khamgaon,
Tal. Kamgaon, Dist. Buldana
 - 3] Nazeemuddin Bashiruddin Shaikh,
Age: years, Occu: Business,
R/o: Dondaicha,
Tal. Shindkheda, Dist. Dhule.
 - 4] Rajesh Santumal Kamra,
Age: 42 years, Occu: Private Service,
R/o: Section 29, Near R.G.S. School,
Ulhasnagar- 4, Dist. Thane
- ... Applicants.

Versus

- 1] The State of Maharashtra
Through Police Station Officer,
Dondaicha Police Station,
Dondaicha, Tq. Shindkheda, Dist. Dhule.
 - 2] Krushna Gopal Nagrale,
Age : Major, Occu : Service,
R/o. Dr. Babasaheb Ambedkar Chowk,
Dondaicha, Tq. Sindkheda, Dist. Dhule.
- ... Respondents.

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Shri V. D. Sapkal, Senior Advocate a/w Shri A. R. Syed, Advocate i/b.

Shri S. P. Brahme, Advocate for Applicants.

Shri M. M. Nerlikar, APP for Respondent No.1 – State.

Shri R. K. Ingole, Advocate for Respondent No.2

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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 27.04.2023
PRONOUNCED ON : 09.06.2023**

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. All applicants herein are seeking exercise of powers under Section 482 of the Code of Criminal Procedure [Cr.P.C.] praying for following principal relief:

“C) This Hon’ble Court may be pleased to quash and set aside first information report bearing C.R. No.153/2016 registered with Dondaicha Police Station, Tq. Shindkheda, Dist. Dhule which is part of Special Case No.44/2019 pending before Ld. Special Judge, Dhule which was for offence punishable u/s. 420, 406, 409, 464, 465, 468, 471, 120(B), 34 of IPC and u/s. 13(1)(C), (D) r/w. 13(2) of Prevention of Corruption Act.

D) This Hon’ble Court may be pleased to quash and set aside the chargesheet dated 18.04.2019 filed in Special Case No. 44/2019 against the applicant no.1 for offence punishable u/s. 420, 406, 409, 464, 465, 468, 471, 120(B), 34 of IPC and u/s. 13(1), (C), (D) r/w. 13(2) of Prevention of Corruption Act.”

Background of the case giving rise to the present application.

2. Under the aegis of Union Government, the Government of Maharashtra declared implementation of a housing scheme i.e. Integrated Housing and Slum Development Programme [IHSDP].

Under said scheme, houses were to be constructed at a cheaper rate specifically for homeless and weaker section of the society. Though it was a joint venture of the Central as well as the State Government, vide Government Resolution dated 25.06.2007, the scheme was decided to be actually executed by local body. The Maharashtra Housing and Area Development Authority [MHADA] was appointed as a nodal agency for supervision and smooth implementation of the scheme. A sub-committee was also constituted to oversee execution of the scheme. Modalities were also chalked out for implementation of the scheme, more particularly in Dondaicha town, for the period from 2008 to 2015.

3. A complaint came to be lodged by one Krushna Nagrale, initially against seven persons, imputing following illegalities and irregularities;

- firstly - constructing excess houses than required and sanctioned;
- secondly - houses were constructed on private land instead of Government land as required;
- thirdly - while implementing scheme there was misappropriation and misutilization of fund;
- fourthly - ineligible persons were selected as beneficiaries;

- fifthly - lands were purchased without paying due consideration;
- sixthly - construction was of substandard quality; and
- lastly - basic and essential facilities were not provided for.

In the light of above accusations, investigation was undertaken and initially seven persons were implicated. However, as investigation progressed, complicity of present applicants was said to be revealed and they too came to be arraigned along with others for commission of offence under Sections 406, 420, 464, 465, 468, 471, 120-B and 34 of the Indian Penal Code [IPC].

Above FIR and the consequential charge sheet are now sought to be quashed and set aside by invoking provisions under Section 482 of the Code of Criminal Procedure [Cr.P.C.].

SUM AND SUBSTANCE OF RIVAL CONTENTIONS

On behalf of the applicants:

4. At the outset, learned senior counsel for applicants appraised us regarding the status of present applicants and pointed out that present applicant no.1 is a Councilor, applicant no.2 is his business

partner, applicant no.3 to be a member of a committee of Municipal Council whereas applicant no.4 to be a mere employee of the construction company. Alleging false implication and involvement, learned senior counsel would submit that applicant no.1 hails from a business family and as such he has ample sources of finance. He submitted that he is a regular tax payer and his entire business activities are duly and promptly audited. While refuting the allegations in the FIR, learned senior counsel would strenuously submit that the FIR in question is politically motivated as, according to him, there was mere close association of applicant no.1 with main accused no.7, who was said to be affiliated to NCP political party. It is submitted that complaint is also full of non-specific, vague and baseless allegations. That, apparently implication is to settle political scores between complainant and accused no.7, who was instrumental in getting the scheme sanctioned for the betterment of weaker section and homeless people.

5. Learned senior counsel further tried to explain to us the object of the housing scheme introduced by the Central Government and to be floated as a joint venture by the Central Government with the State Government in the backdrop of the Government Resolution. He invited our attention to the said Government Resolution also.

According to him, though local body was an implementing agency, the nodal agency was MHADA. According to him, the entire modalities and implementation of scheme is a matter of Government policy which was continuously monitored and supervised and there was provision for checks and balances at regular intervals. He submitted that the entire control over the scheme was that of the Central Government. According to him, from the stage of sanctioning of the scheme to selection of sites, selection of contractor and disbursement of funds were under the control of specialized agencies of the Government and thus it is his submission that, there was no scope for any local person to indulge in any illegalities or irregularities nor applicants had any vested interest. According to him, in all 3796 houses were already constructed and handed over to eligible beneficiaries after verification by Government authorities. He would point out that there were regular audits not only at local level, but even by MHADA as well as CAG i.e. Comptroller and Auditor General of India. He would emphasize that at no point of time any of these agencies had come across any financial irregularities. According to him, in fact the scheme implemented at Dondaicha has become a model housing scheme and there is its appreciation at the National level.

6. Learned senior counsel also took us through the papers and annexures and would submit that on receipt of complaint, thorough inquiry was made by the Municipal Council regarding veracity of the allegations, but nothing illegal was detected and therefore, report to that extent was also forwarded to the Government. It is submitted that likewise the complainant was also appraised about the status of the scheme and that there were no irregularities as alleged. It is pointed out that applicant no.1 is a tax payer. That, he has accounts for all his financial transactions regarding his funding to the construction company. There, there were no personal interests or gains as alleged. That, all transactions are clear and transparent and there were no clandestine transactions as alleged. However, with ulterior and oblique motive there is false implication of applicants and according to him, they are unnecessarily made to face the ordeal of prosecution and hence they deserve relief as prayed.

On behalf of the Respondent-State:

7. While opposing the relief, learned APP would also brief us about the housing scheme and would submit that for achieving the aim and object of the scheme, Municipal Council at Dondaicha was entrusted with the work of implementation of the scheme being a

local body. He pointed out that applicant no.1 was a co-opted member of the Municipal Council whereas, applicant no.3 was also a member of a standing committee. That applicant no.1 is found to be running a construction firm by name Shri Krupa Group of Constructions. Applicant no.2 is his partner and applicant no.4, though nephew of applicant no.2, however he is shown as an employee. Learned APP pointed out that on receipt of complaint, an in-depth inquiry was undertaken which revealed that corers of rupees were transferred in the account of applicant no.1 from the account of applicant no.2 clandestinely. That, investigation also revealed involvement of applicant nos. 3 and 4 as there were trails regarding money reaching them too. Learned APP would define role of each of the applicants herein, which is as under :

“1) The applicant No. 1, Girdharilal Madhavdas Ramrakhya

- a. He was the then co-opt member of the Municipal Council Dondaicha from 21.12.2011 to 22.12.2016.
- b. During the investigation it is revealed that, crores of rupees are credited in his personal account as well as his family members account from the account of Applicant No.2 Santosh Sitaram Jaiswal, who is the Builder/Contractor of the Housing Scheme.

2) **Applicant No.2, Santosh Sitaram Jaiswal.**

- a. He was proprietor of M/s Shree Krupa Group of Construction to whom the contract of construction of the houses was given by Municipal Council.
- b. During forensic Audit it was revealed that, near about four crores were transferred to the account of applicant No.1 Girdharilal and his family members.
- c. The applicant had also signed as a witness to the transaction deed between C.O. of Dondaicha Municipal Council and Smt. Vimalabai Bhoi of purchase of survey no.28/2A as well as he was the witness on the transaction deed between C.O. of Dondaicha Municipal Council and Pundhlik Chaudhari and others of Survey No.45/1.

3) **Applicant No.3, Nazeemuddin Bashiruddin Shaikh.**

- a. The applicant was Chairman of Building Committee as well as Education Committee during the relevant period.
- b. The applicant had taken an amount from the witnesses and had given assurance to provide houses to them in the housing scheme. However, during investigation it is revealed that no such houses are allotted to the said witnesses.

4) **Applicant No.4, Rajesh Santumal Kamra**

- a. That, the applicant is real nephew of applicant No.1 Girdharilal and he was supervisor in the firm namely Shree Krupa Group and Construction Company, belonging to applicant no.2.
- b. During investigation it is revealed that he has acted as mediator between applicant No.1 Girdharilal and Applicant No.2 Santosh and also he has signed on the cheque voucher and cash voucher payable to applicant Girdharilal.”

Consequently, it is submitted that investigation has revealed involvement of applicants along with others. Apparently, fraud has been played on the Government. Investigation revealed commission of offence of cheating, misutilization of funds, misappropriation, violation of standard operating procedure and guidelines. Therefore, according to him, applicants need to face prosecution for their deeds.

Analysis and conclusion

8. We have heard both the sides at length and with the able assistance of both the learned counsels representing each side, we have also taken survey of papers placed before us including charge sheet.

We could gather that an housing scheme was approved and floated by the Government under Integrated Housing Slum Development Programme specifically for the benefit of homeless, shelter-less slum dwellers which was a part of Jawaharlal Nehru Urban Renewal Mission run by Ministry of Urban Development, Urban Employment and Poverty Elevation Programme. With such scheme, shelter was proposed to be provided to the homeless persons. In accordance with such objective, Government of Maharashtra seems to have decided to implement the scheme by issuing GR for area like Dondaicha at Dhule District. Municipal Council being a local body was in the loop and primarily responsible at local level for execution of the scheme. Funding was to be done by both Central as well as State Government in respective shares. Houses were to be constructed in phase manner and in the initial phase, over 35000 houses were constructed.

9. It seems that a complaint came to be received from one Krushna Nagrale, which is placed on record and its sum and substance is that there is fraud played on Government, funds have been misappropriated and misutilized. Apart from several irregularities during implementation of the scheme, persons allegedly responsible for the same were also named in the complaint dated

03.09.2016 on the basis of which FIR dated 11.11.2016 came to be registered.

10. In the above backdrop, it seems that initially inquiry was conducted at Municipal Council level. However, subsequently FIR came to be registered and investigating machinery is of the opinion that there were in fact irregularities and illegalities in implementing the scheme by circumventing procedure laid down in the GR. Initially seven persons were named, but as investigation progressed, involvement of present applicants also was revealed and they too are named with initially named accused persons.

11. We have carefully examined the investigation papers placed before us along with affidavit of the State. As far as present applicant no.1 Girdharilal is concerned, papers reveal that he is arraigned as accused no.8 and he is said to be the then co-opted councilor of Dondaicha Warwade Municipal Council, whereas applicant no.2 Santosh is said to be owner of Shri Krupa group of construction, present applicant no.3 Nazeemuddin was said to be the then chairperson of construction committee Dondaicha Municipal Council and applicant no.4 was said to be an employee of the said construction company. However, so far as applicant no.4 is

concerned, prosecution has come with a specific allegation that he is a nephew of applicant no.1. It is pertinent to note that above status has not been refuted or denied by the present applicants. It is noticed by us that in the light of specific allegations which are reproduced in the aforesaid para, investigation has been carried out and findings in that context are reflected in the charge sheet. Investigating machinery seems to have reached to a finding that there is hatching of a conspiracy for personal profits and gains. Investigation also seems to have revealed that excess number of houses were constructed than were required and sanctioned at Tek Bhilati, Adarshnagar and Kandharwada area. Investigation also said to have revealed that houses were erected on private land which was unauthorized and some houses were found to be erected outside the Municipal limits which was in violation to the guidelines laid down for the scheme. Investigating machinery claims that apart from erecting substandard and poor quality houses, actual beneficiaries were deprived from the benefits. Investigating machinery also claims to have found out that the activity of construction was awarded to a construction company which was inexperienced and had no capacity to handle the project. It is specifically stated in the charge sheet that when investigation was made on the financial aspect and transactions, it was revealed that huge amounts were received and transferred by present applicant

nos.1, 2 and 3 and sources of funds were not properly explained. Investigating Officer has reproduced the bank account details with account numbers of present applicants. FIR shows that investigation revealed irregularities in awarding tender and that too at excess rate than approved by the Government. There are specific allegations of unaccounted money and about misappropriation of Government funds. Investigating Officer claims that investigation revealed that there is sharing of misappropriated fund by present applicants and therefore they are roped in as accused for commission of various offences under the IPC along with commission of offence under the Prevention of Corruption Act, 1988.

Thus, here, accused are implicated on specific accusations for commission of offence under Sections 420 i.e. cheating, 406 criminal breach of trust, 464 fabrication of documents, 465 forgery, 468 forgery for cheating, 471 fraudulently and dishonestly using a forged document as genuine and 120-B criminal conspiracy. Investigating machinery claims to have laid its hands on oral and documentary evidence. Moreover, it is emphasized by learned APP that investigation is still in progress which includes collection of documentary evidence from office of Chief Officer, Municipal Council Dondaicha, PWD, Town Planning, Audit Department, Revenue

Department, including financial institutions like bank. Process of forensic audit is also said to be under way. According to investigating machinery, revenue source of amount of more than Rupees twelve crore is yet to be unearthed thereby necessitating further forensic audit. At this stage, charge sheet is filed only under Section 173(8) of Cr.P.C. thereby leaving scope for filing supplementary charge sheets.

12. According to learned APP, whatever investigation has been carried out till date, the same has revealed that applicant no.1 has financed the construction company of which applicant no.2 is also owner and partner along with applicant no.1 and over rupees four crore were credited in the account of applicant no.1 and his wife on one and the same day. It is also claimed that it is revealed that there is withdrawal of huge amounts from the account of applicant no.2 Santosh and some amount out of it is transferred to applicant no.1 Girdharilal as well as accused no.7 Hemant. Consequently, it is alleged by prosecution that there is active involvement and participation amongst applicant nos. 1 and 2 in the alleged irregularities.

13. Here, applicants are seeking exercise of powers under Section 482 of Cr.P.C. for quashing FIR and charge sheet. It is fairly settled legal proposition that powers under Section 482 of Cr.P.C. are to be exercised sparingly and in rarest of the rare case. Such proposition has been enunciated in volume of cases, time and again viz. *King-Emperor v. Khwaja Nazir Ahmad* ; AIR 1945 PC 18, *R. P. Kapur v. State of Punjab* ; AIR 1960 SC 866, *Kurukshetra University v. State of Haryana* ; (1977) 4 SCC 451; including celebrated case of *State of Haryana and others v. Ch. Bhajan Lal and others* ; 1992 Supp. (1) SCC 335/AIR 1992 SC 604, *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* ; (2005)1 SCC 122 ; *State of Maharashtra v. Arun Gulab Gawali* ; (2010) 9 SCC 701, and very recently a three Judge Bench of the Hon'ble Apex Court in the case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others* ; 2021 SCC OnLine SC 315 has culled out certain essential principles which are to be borne in mind while exercising powers under Section 482 of Cr.P.C. Few **relevant principles**, in the backdrop of nature of case in hand, could be **summarized** as under:

1. *The power of quashing should be exercised sparingly with complete circumspection and in the 'rarest of rare case'.*

2. *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon the enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*
 3. *Criminal proceedings ought not to be scuttled at the initial stage.*
 4. *The power under Section 482 Cr.P.C. is very wide but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.*
 5. *When a prayer for quashing FIR is made, court while exercising powers under Section 482 Cr.P.C. only has to consider whether allegations in the FIR disclose commission of cognizable offence or not. Court is not required to embark on a detailed inquiry or to consider on merits whether or not allegations make out cognizable offence and the court has to permit the investigating machinery to investigate the allegations in the FIR.*
 6. *Court should not thwart any investigation into the cognizable offences.*
14. Similarly, it is also a settled legal position that inherent powers of the High Court can be exercised to quash proceedings in appropriate cases either to prevent the abuse of process of law or to

secure the ends of justice. High Court is not expected to interfere in criminal proceedings which are at interlocutory stage or pending investigation. The circumstances in which it is held to be advisable for a High Court to exercise the inherent powers are clearly propounded in the celebrated case of *Ch. Bhajan Lal* (supra) as well as in the case of *R.P. Kapur* (supra). The **exceptions** to the above settled rule are as follows:

- i. It is only in cases where no cognizable offence or offence of any kind is disclosed in the FIR that the Court will not permit an investigation to go on.
- ii. Where non-interference would result in miscarriage of justice, the court and judicial process should not interfere at the stage of investigation of offences.
- iii. Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
- iv. Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of

appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

- v. Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

15. In the case of ***State of U.P. v. Naresh and others*** ; (2011) 4 SCC 324, the Hon'ble Apex court observed that when investigation by

police is in progress, court should not go into the merits of the allegations in FIR.

16. Bearing above legal position in mind, and taking into account the fact in the case in hand about investigation being in progress, and in the light of serious accusations of committing economic offence thereby misappropriating huge amounts and playing fraud, we refrain from considering or granting the prayers raised herein. At this stage, we cannot value or give weightage to the oral and documentary evidence gathered by the investigating machinery or to comment on its veracity. In our considered opinion, this is not a fit case for exercise of inherent powers under Section 482 of Cr.P.C. However, we wish to emphasize that in rejecting the prayers for quashing the proceedings at this stage, we are expressing no opinion one way or the other on the merits of the case. Resultantly, the application is rejected.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]