

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1644 OF 2022

Gajanan S/o Ramchandra Kulkarni Applicant

Versus

The State of Maharashtra & another Respondents

Mr. A. V. Lavte, Advocate for the applicant.
Mr. P. G. Borade, APP for the State.
Mr. S. B. Ghute, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 1643 OF 2022

Kailash Narayanrao Tithe Applicant

Versus

The State of Maharashtra & another Respondents

Mr. S. E. Shekade, Advocate for the applicant.
Mr. P. G. Borade, APP for the State.
Mr. S. B. Ghute, Advocate for respondent No. 2.

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

DATE : 16th JANUARY, 2023.

PER COURT :

1. By consent of the respective parties, heard finally at the stage of admission.

2. These are the applications filed under Section 482 of the Code of Criminal Procedure for quashing First Information Report No. 116/2022 dated 6th April, 2022 registered with Police Station Nanalpeth, Dist. Parbhani and R.C.C. No.467/2022 pending on the file of learned Chief Judicial Magistrate, Parbhani for offences punishable under Sections 406 and 409 read with Section 34 of the Indian Penal Code.

3. Heard learned counsel for the applicants, learned APP for the State and learned counsel for respondent No. 2. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant to the First Information Report lodged by respondent No. 2 herein under the directions of Chief Executive Officer, Zilla Parishad, Parbhani. It is the case of the prosecution that on 3rd August, 2021, work order was issued in favour of M/s Jai Enterprises of which, applicant Kailash is the proprietor, to install three lifts in Covid centre and an amount of Rs. 60,48,112/- was released in favour of applicant Kailash to complete the said work. Applicant Gajanan was the Sectional

Engineer (Electrical) and he was to supervise the said work. The work was to be completed within three months from the date of the work order. It is stated that inspection was conducted on 21st March, 2022 and it was revealed that only 10% of work was completed. It is further stated that out of amount of Rs. 60,48,112/-, the applicant had utilised amount of Rs. 57,08,368/- and mis-appropriated amount of Rs. 3,39,748/-. The allegations against applicant Gajanan are that he had failed to supervise the work allotted to applicant Kailash.

5. Learned counsel for applicants submit that the work was completed on 5th April, 2022 as per the work order and no offence is made out against them. Learned counsel for respondent No. 2 concedes that the entire work of installing three lifts as per the work order has been completed. He further contends that there was delay in completing the work.

6. The applicants are alleged to have committed offence under Sections 406 and 409 of the Indian Penal Code. Dishonest misappropriation or use is one of the essential ingredients of criminal breach of trust as defined under Section 405 of the Indian Penal

Code. In the instant case, it is not in dispute that an amount of Rs.60,48,112/- was released in favour of the applicant Kailash for construction of the lift as per the work order. At the time of the initial inspection the applicant had carried out only 10% of the tender work. It is not in dispute that the work was subsequently completed, though with a delay of three months.

7. Suffice it to say that mere delay in completing the work and negligence in supervision would not constitute any offence. Though it is stated that applicant Kailash has mis-appropriated an amount of Rs. 3,39,748/-, there is absolutely no material on record to substantiate the charge of criminal breach of trust. Infact, the report submitted by the officer appointed by respondent No. 2 does not even indicate that there was any mis-appropriation on the part of applicant Kailash. Furthermore, there are no allegations of acquisition of the dominion or control over any property by the applicant Gajanan as a Public Servant. In our view, the First Information Report as well as the other material collected in the course of the investigation does not disclose facts which are essential to constitute offence of criminal breach of trust, much less mis-appropriation.

8. In short, the First Information Report and other material collected in the course of investigation, do not disclose commission of any cognizable offence. Present case is squarely covered by illustrations (1) and (3) given by Apex Court in the case of The Hon'ble Supreme Court in State of Haryana and others vs. Bhajan Lal and others, AIR 1992 Supreme Court Cases 335 which read thus :-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

* * *

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

9. In the result, continuance of criminal proceedings as against these applicants would be sheer abuse of the process of law. Hence, both the applications are allowed. First Information Report No. 116/2022 dated 6th April, 2022 registered with Police Station Nanalpeth, Dist. Parbhani and consequential RCC No. 467/2022 pending on the file of learned Chief Judicial Magistrate, Parbhani for

offences punishable under Sections 406 and 409 read with Section 34 of the Indian Penal Code stand quashed.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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