

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1827 OF 2020

1. Khwajamiyan Ahmad Hussain
Farooqui, Age 39 years,
Occupation Business/ Contractor,
R/o Galib Nagar, Dargah Road,
Parbhani, Tq. & Dist. Parbhani
 2. Shaikh Mohd. Rafiq Mohd. Shaikh Noor,
Occu. Driver,
R/o Kurban Ali Shah Nagar,
Parbhani, Tq. & Dist. Parbhani
- ... APPLICANTS

VERSUS

1. The State of Maharashtra
through Investigating Officer,
Kotwali Police Station,
Parbhani, Tq. & Dist. Parbhani
 2. Gunaji s/o Trimbak Bhole,
Age 34 years, Occu. Service as
Police Constable, Kotwali Police Station,
Parbhani, Tq. & Dist. Parbhani
- (Copy to be served on the
Public Prosecutor, high Court of
Bombay, Bench at Aurangabad)
- ... RESPONDENTS

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Mr. M.P. Tripathi, Advocate for applicants
Shri S.D. Ghayal, A.P.P. for respondent No.1.
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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 6th JANUARY, 2023

ORAL JUDGMENT (PER SMT. ANUJA PRABHUDESSAI, J.) :

With consent, heard finally at the stage of admission.

2. By this application filed under Section 482 of the Code of Criminal Procedure, the applicants have sought to quash First Informant Report bearing Crime No.271/2020, registered with Kotwali Police Station, Parbhani for the offences punishable under Sections 420, 188 read with Section 34 of the Indian Penal Code and the consequential criminal proceedings being R.C.C. No.74/2021, pending before the learned Chief Judicial Magistrate, Parbhani.

3. Heard learned counsel for the applicants 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.

4. The case of the prosecution is that, on 17/9/2020, a tractor trolley bearing Registration No.MH-26/AT-4110, which was

carrying sand weighing 1 brass, was intercepted by the complainant Shri Gunaji Tryambak Bhole. It is alleged that, the applicant had purchased the sand in an auction, to be utilised for construction of railway work as per the contract but it was taken it for his personal use.

5. It is not in dispute that the applicant had purchased 30 brass sand from Tahsildar, Manwat for construction of railway work. The applicant had utilised 25 brass sand for construction of tender work. It is stated that, the construction was completed and the applicant was taking the balance sand to his residence in view of lockdown declared during the said period. The applicant had admittedly purchased the said sand and had made the requisite payment. There is no intention to deceive or cheat, which is an essential ingredient of Section 420 of the Indian Penal Code.

6. The First Informant Report as well as the other material on record, even taken in its entirety, do not constitute offence punishable under Sections 420 and 188 of the Indian Penal Code. Under such circumstances, continuance of criminal proceedings against the applicant will be sheer abuse of the process of Court. Hence, the Criminal Application is allowed in

terms of prayer clauses (B) and (B-1). Consequently, the First Informant Report bearing Crime No.271/2020, registered with Kotwali Police Station, Parbhani for the offences punishable under Sections 420, 188 read with Section 34 of the Indian Penal Code and the consequential criminal proceedings being R.C.C. No.74/2021, pending before the learned Chief Judicial Magistrate, Parbhani stand quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-