

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

33 CRIMINAL APPLICATION NO.3496 OF 2019

**SATPUDA TAPI MAJOOR SAHAKARI SOCIETY LTD., CHOPDA THRITS
DIRECTORS A SHARIF AHMED SATTAR AND OTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr.Girish S. Rane, Advocate for the applicants.
Mr.S.R. Yadav-Lonikar, APP for the respondent/State.
Mr.A.G. Talhar, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 15.03.2023**

PC :-

01. Heard learned Advocates for both the parties. The application is taken up for final disposal by the consent of the parties.

02. The application is against an order dated 13.01.2017 passed by the learned Chief Judicial Magistrate, Jalgaon, issuing process against accused Nos.6, 6/1 to 6/7 for offences under sections 420, 465, 467, 468 r/w 34 of the Indian Penal Code, while prayer to issue process under section 409 of the IPC is rejected. Present petitioners are accused No.6 and accused Nos.6/1 to 6/7

are its Directors. A complaint is filed by respondent No.2 in the Court of learned JMFC against Officers of Public Works Department and Building and Construction Department, Chief Officer, Nagar Parishad, Chopda and Ex. MLA. The allegations are that applicant No.1 society carried work of construction of road from the special funds of MLA. The construction was of road in Chunar Ali from the house of one Manjur Ali to the house of Majpur Ali. It is alleged that in the said work, bogus record of the work was prepared. The work was actually not done, however, it is only shown to have been done. From the documents received under Right to Information Act, revealed that there was fraud of the Government funds to the extent of Rs.2,40,603/-. On this, the learned Magistrate recorded verification of the complainant and other witnesses and recorded that the accused Nos. 1 to 5 and 7 and 8 are public servants and without sanction no process can be issued against them and issued process only against present applicants. It is this order, which is challenged in the present application.

03. The learned Advocate for the applicants gave background of the matter. He submits that one Suresh Maganlal Shirsath had filed complaint bearing Cr.M.A. No.111 of 2015, wherein present complainant who is

respondent No.2 in the application was shown as witness No.5. The said complaint came to be dismissed for want of prosecution. Suresh had also filed complaint with the police. Police conducted inquiry and communicated Suresh by communication dated 05.08.2015 that no offence is disclosed. Said Suresh thereafter even approached the Lokayukta, State of Maharashtra by filing Complaint No. LA/COM/2/2017 (T-3). The hearing was conducted on 14.06.2017. During the course of hearing it is recorded by the Lokayukta that the contractor who completed the work intervened in the complaint. He informed Lokayukta that in-fact Suresh is blackmailing the Directors and the society. He even played audio recording from his cell phone, which revealed that Suresh had asked for money from the Directors for withdrawing the complaint. Said audio recording was not denied by Suresh and he withdrew the complaint. Thereafter, it was recorded by Lokayukta that the complaint was not made in good faith, but was made only with a view to extort money from the Directors. The complaint came to be closed by order dated 28.08.2015. So far as complaint by Suresh is concerned, it came to an end.

04. After complaint filed by Suresh, wherein present respondent was shown to be witness in that complaint – Sabir Shaikh Siddique lodged another

complaint i.e. RCC No.205 of 2016. On the similar set of facts and in respect of same work which was carried out and completed in the year 2012. In this complaint, earlier complainant Suresh Shirsath is shown as witness. The learned Advocate, therefore, submits that this clearly shows that both the complaints are lodged in connivance with each other and when earlier complaint came to be dismissed, now respondent No.2 has filed second complaint. In the complaint, the learned Magistrate directed investigation under section 202 of the Cr.P.C. and directed police to carry out investigation. The police submitted its report and after the report and after recording statements of one Manjur Ali and the complainant, the learned Magistrate passed order of issuance of process. He further submits that this is clearly a malafide exercise on the part of the complainant. The learned Court below ought to have considered that no case is made out against the applicants and ought to have rejected the complaint. His another contention is, none of the parties is from Jalgaon, however, still the complaint was deliberately filed in the Court of Jalgaon instead of Chopda. In Jalgaon, no cause of action has taken place. In the complaint, only averment is that the work was sanctioned at Jalgaon. The cheque was issued at Jalgaon and therefore complaint was filed at Jalgaon. He relied upon judgment reported in the case of **Birla**

Corporation Ltd. Vs. Adventz Investments and Holdings Ltd. & Ors., reported in AIR 2019 SC 2390, Sunil Bharti Mittal Vs. Central Bureau of Investigation, AIR 2015 SC 923, State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604.

05. As against this, the learned Advocate for respondent No.2 argued that huge amount of the Government has been siphoned by the accused persons. The offence is clearly made out against the society. The society is main beneficiary of the work and therefore is the main culprit. He further submits that the learned Court considered all the aspects and has passed an order of inquiry under section 202 of the Cr.P.C. and has also held that it is only upon receipt of report from the police authority, process is issued and no fault can be found.

06. The learned APP also vehemently opposed the application. He submits that what needs to be seen at this stage is whether the procedure is followed before issuance of process. He submits that once inquiry under section 202 of the Cr.P.C. was directed and witnesses were examined i.e. sufficient compliance of the requirement, the order cannot be faulted and

prays for rejection of the application.

07. After hearing the parties, this Court finds that the work of the construction of road was sanctioned under the MLA special funds. The Executive Engineer, Public Works Department, Amalner was requested to carry out the work. After the work was completed, the Chief Officer of Municipal Corporation even took possession of the road giving specification of the work. The Sub-Divisional Officer, Public Works Department, Chopda had certified the work. Thus, the work was to the satisfaction of the authority. There is nothing to indicate that the work is not carried out. The documents which are annexed to the petition are not denied by any of the respondents and since the documents are issued by the authorities, there would be no difficulty in considering the documents, for the purpose of deciding this application.

08. Coming to the bonafides of the respondent, it is clear that the complaint is lodged in 2016, though appears to be filed as 30.03.2015 at the bottom of the complaint. By looking at the endorsement of the Court, it appears that it is presented on 13.03.2016. Though the work was carried in 2012 itself i.e. more than four years prior to lodging of the complaint. It is

not mere coincidence that this complainant is shown as witness in the complaint that was filed by Suresh Shirsath, which was dismissed for want of prosecution. It is seen that said Suresh has also filed complaint with the police in and the police have carried out investigation and have come to a conclusion that no offence is made out. This report is not challenged. Even his complaint RCC No.111 of 2015 though was dismissed for default by order dated 28.08.2015, said order was also not challenged by Suresh. Instead, he approached Lokayukta, wherein Lokayukta has clearly observed that the complaint before the Lokayukta was not in good faith and was filed for extorting money.

09. Same complainant is shown as witness in the complaint filed by present respondent wherein the allegations are almost similar. The complaint is lodged after dismissal of the complaint filed by Suresh. There is room to believe that the complaint is filed at the instance of Suresh Shirsath. Looking to the judgments cited by learned Advocate in the case of Birla Corporation (Supra), the Hon'ble Apex Court in para 61 observed that satisfaction of the Magistrate in ordering issuance of process to the respondent was not well founded. Thus, this Court finds that though there was inquiry under section

202 of the Cr.P.C., however, there is no sufficient application of mind by the learned JMFC on that aspect. In the judgment of **Sunil Mittal (Supra)**, the Hon'ble Apex Court has considered the word as to "taking cognizance", wherein it is held that sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations if proved, would constitute an offence. It is held that it is therefore imperative on a complaint or on a police report, the Magistrate considers the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect.

10. Looking to the order, this Court finds that there is no sufficient discussion to show that the learned Magistrate had satisfied himself about the existence of prima facie case. Though it is observed in the impugned order that the applicants have failed to do the work and submitted a false report about completion of work is without sufficient discussion about any material on record. Further wording in the observation shows that the Court had already formed an opinion that the applicants have committed the offence of cheating, forgery etc. To come to this conclusion some more discussion was necessary.

11. In the judgment in the case of **Bhajanlal (supra)**, the Hon'ble Apex Court has given guidelines for quashing complaint. Though the learned Advocate submitted that guideline Nos. 1, 5 and 7 are applicable to this case, this Court finds that this case clearly falls under guideline Nos.1 and 7. It is amply clear from the record that earlier complaint was lodged with malafide intention as is observed by Lokayukta and said is unchallenged. This Court finds that there is no sufficient discussion or application of mind.

12. Therefore, the application succeeds and same is allowed in terms of prayer clause (A).

[KISHORE C. SANT, J.]