



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 362/2023

Suresh S/o. Natthusa Jaysinghpure,
aged about 52 yrs., Occ. Agriculturist,
R/o. Nawabpura, Ner, Tq. & Dist. Yavatmal.

APPLICANT

VERSUS

1. The State of Maharashtra,
through the Police Station Officer,
Tq. Ner, Dist. Yavatmal.
2. Nilesh Nanaji Shirsat,
Aged about Major,
Occ. Police Constable, Buckle No.2307,
R/o. Police Station, Ner, Tq. & Dist. Yavatmal.
(Deleted as per Court's order dt. 29.09.2023)

NON-APPLICANT

Mr. Jemini B. Kasat, Advocate for applicant.
Mr. S.M. Ghodeswar, APP for non-applicant No.1/State.

CORAM : VINAY JOSHI AND
M. W. CHANDWANI, JJ.

DATE : 20.10.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2**2. Admit.**

3. This is an application seeking to quash charge-sheet No.32/2021 arising out of Crime No. 58/2021 registered with Police Station Ner. Tq. Ner, Dist. Yavatmal for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code and Section 79 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013.

4. It is the case of the prosecution that on intervening night dated 10.02.2021 to 11.02.2021 around 02.30 a.m., the Police have intercepted a Tractor bearing Registration No. MH-29-V-3378 carrying 2 brass soil and therefore, the report of theft.

5. The learned counsel appearing for the applicant submits that he has duly permitted to transport the soil and therefore, no offence is made out. The applicant has attracted our attention to the communication dated 15.03.2021 issued by the Tehsildar to the concerned Police Station informing that the applicant was duly permitted to transport soil at the relevant time. Moreover, the applicant has produced a copy of permission dated 15.12.2020 which

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is part of charge-sheet. It reveals that there is violation of terms and conditions, however, the prosecution is unable to point out as to how the offence of theft would be attracted. In the circumstances, it is evident that even though the prosecution case is accepted as it is, there is no prima facie case. The facts of the case squarely falls in guideline Nos. 1 and 3 of para 108 as the decision of the Supreme Court in case of **State of Haryana Vs. Bhajan Lal, AIR 1992 (SC) 604.**

6. In view of above, application is allowed, we hereby quash and set aside charge-sheet No.32/2021 arising out of Crime No. 58/2021 registered with Police Station Ner. Tq. Ner, Dist. Yavatmal for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code, Section 79 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)