

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

CRIMINAL APPLICATION (APL) NO. 535 OF 2012

APPLICANTS

- : 1. Smt. Indirabai Mahadev Ingle,
Aged major, Occ.: Housewife.
2. Rameshwar Rambhau Shingne,
Aged major, Occ.: Agriculturist.
3. Smt. Nalinitai Suryadev Raut,
Aged major, Occ.: Housewife.
4. Dinkar Jagdev Wankhade,
Aged major, Occ.: Agriculturist.
5. Shyamsheel Sahdev Bhopale,
Aged major, Occ.: Agriculturist.
6. Majroddin Vakiloddin,
Aged major, Occ.: Agriculturist.
7. Nitinkumar Krantikumar Bhopale,
Aged major, occ.: Agriculturist.
8. Prakash Natthuji Khobragade,
Aged major, Occ.: Agriculturist.
9. Ravindra Laxmanrao Poke,
Aged major, Occ.: Agriculturist.
10. Smt. Sayrabi Abdul Khalique,
Aged major, Occ.: Housewife.
11. Pandurang Atmaram Aswar,
Aged major, Occ.: Agriculturist.
12. Gajanan Vishwanth Rekhate,
Aged major, Occ.: Agriculturist.

13. Smt. Sheelabai Ramkrushna
Gawande,
Aged major, Occ.: Housewife.
14. Arifali Yusufali Mir Saheb,
Aged major, Occ.: Agriculturist.
15. Smt. Pushpatai Satyadev Girhe,
Aged major, Occ.: Agriculturist.
16. Ghanshyam Narayandas Taori,
Aged major, Occ.: Agriculturist.
17. Smt. Radhadevi Ghanshyam Taori,
Aged major, Occ.: Housewife.

All resident of Hiwarkhed, Tah.
Telhara, Distt. Akola, P.S.
Hiwarkhed.

//VERSUS//

- NON-APPLICANTS** : 1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Hiwarkhed,
Tah. Telhara, Distt. Akola.
2. Ramesh Krushnadev Gupta, Aged
53 years, Occ.: Business, Prop. M/s.
Gupta Agencies, R/o. Hiwarkhed,
Tah. Telhara, Distt. Akola.
- Abated against R-3 as per
Court's Order Dt.
1/12/2020
3. *(Shaligram Motirm Rahate,
Aged major, Occ.: Service.)* **Dead**
4. Gangadhar Narayan Raut,
Aged major, Occ.: Service.
5. Digambar Kashinath Rewaskar,
Aged major, Occ.: Service.

6. Ashok Narayan Umbarkar,
Aged major, Occ.: Service.
7. Uttam Devidas Telgote,
Aged major, Occ.: Service.
8. Pandurang Devlal Garje,
Aged major, Occ.: Service,

Nos. 3 to 8 are resident of Panchayat
Samiti, Telhara, Police Station,
Telhara, Tah. Hiwarkhed, Distt.
Akola.

Mr. Ishwar S. Charlewar, Advocate for the Applicants.
Mr. A.R. Chutke, APP for Non-applicant No.1/State.
Mr. U.P. Dable, Advocate for Non-applicant No.2.
Mr. Firdos Mirza, Advocate for Non-applicant Nos.4 to 8.

CORAM : G. A. SANAP, J.
DATED : 7th FEBRUARY, 2023.

ORAL JUDGMENT

In this criminal application, filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.PC"), the applicants have questioned the correctness of the order passed by the learned Additional Sessions Judge, Akot dated 8th June, 2012 and also the order of issuance of process passed by the learned Judicial Magistrate First Class, Telhara dated 15th April, 2010. The

learned Judicial Magistrate First Class, Telhara, by order dated 15th April, 2010, issued process against the applicants for the offences punishable under Sections 406, 409, 419, 420, 422, 468, 471 and 477(A) read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"). This order of issuance of process was challenged by filing the revision application before the learned Additional Sessions Judge, Akot by the applicants. The revision application came to be dismissed.

02] The facts relevant for the decision of this criminal application may be stated as under :

The applicant Nos.1 to 17 at the relevant time were the members of the Gram Panchayat, Hiwarkhed. The applicant No.1 was the Sarpanch and the applicant No.2 was the Upsarpanch. The applicant Nos.1 to 17 are shown as accused Nos.1 to 17 in the complaint, filed by the non-applicant No.2/complainant. The non-applicant No.3, who is now dead, was accused No.18. At the relevant time, he was the Secretary of the said Gram Panchayat. It is the case of the non-applicant No.2/complainant that in the year 2001, the Gram Panchayat Hiwarkhed had undertaken the work of construction of drainage in the village Hiwarkhed. According to the non-applicant No.2/complainant, the accused Nos.1, 2 and 18

had approached him and requested him to supply iron, cement and other materials at the approved rates on the credit basis for the construction of drainage. As per the agreement, the applicants purchased the iron, cement and other materials worth Rs.64,450/-. The said material was delivered under the delivery memo. The applicants acknowledged the receipt of the materials by issuing receipts in Form No.7-A and also the liability to pay Rs.64,450/-. It is further case of the non-applicant No.2/complainant that the applicants demanded Rs.10,000/- as hand loan to pay the labour charges. The non-applicant No.2/complainant paid the same. The applicants issued receipt No.6 on 23rd June, 2001 for Rs.10,000/-. In respect of this liability of the Gram Panchayat, a Resolution was passed in the meeting of Gram Panchayat, Hiwarkhed held on 18th June, 2001 and in the said Resolution, the applicants have accepted and acknowledged the liability to pay the above amount to the non-applicant No.2/complainant. The receipts were issued in favour of the non-applicant No.2/complainant.

03] The non-applicant No.2/complainant made a demand of the money from the applicants. Since the amount was not paid, he issued a notice under Section 180 of the Bombay Village Panchayats Act, 1958 on 27th March, 2002 and made a demand of

the money. On failure of the applicants to pay the money, the non-applicant No.2/complainant filed a civil suit for recovery of the money on 6th January, 2003 in the Court of Civil Judge (Junior Division), Telhara bearing Regular Civil Suit No.05/2003. In the written statement filed by the applicants and others in the said suit, the claim of the non-applicant No.2/complainant was opposed. They denied their liability. They denied the nature of transaction. The applicant No.23 denied the Resolution dated 18th June, 2001. The receipts, payment etc. was also denied. It is stated that after recording the evidence in the civil suit, the non-applicant No.2/complainant came to know on the basis of the record that the payment to the tune of Rs.74,450/- was shown to have been made to the complainant on 23rd June, 2001. In fact, he had not received the payment. Further perusal of the record revealed that under the Voucher No.283, the payment of Rs.64,000/- was made to one Abdul Salam Abdul Kadar and not to the complainant. On these averments, the non-applicant No.2/complainant filed the complaint and alleged that the forged and fabricated documents were created to deny the liability of the payment. It was with an intention to cause wrongful loss to the non-applicant No.2/complainant.

04] On filing the complaint, the verification statement of the non-applicant No.2/complainant was recorded by the learned Magistrate. Similarly, the learned Magistrate was pleased to order further inquiry through the police before issuance of process. The police submitted the report on 25th June, 2009. On perusal of this report, the learned Magistrate found that further inquiry is required and, therefore, the learned Magistrate, by order dated 2nd November, 2009, directed the Chief Executive Officer, Zilla Parishad, Akola to conduct the inquiry. He conducted the inquiry and submitted his report dated 20th August, 2009. The learned Magistrate, on going through the complaint, verification statements, the police report and the report of the Deputy Chief Executive Officer, Zilla Parishad, Akola, found substance in the complaint and accordingly issued the process against 23 accused persons. The applicant Nos.1 to 17 were the accused Nos.1 to 17. The accused No.18 to 23 were working as Gram Sevak and Village Development Officer. The order of issuance of process was challenged by filing the revision application by the applicants/accused Nos.1 to 17. The learned Additional Sessions Judge, Akot, for the reasons recorded in the order dated 8th June, 2012, was pleased to reject the revision. The applicant Nos.1 to 17 have, therefore, questioned the correctness of the said order passed

by the learned Additional Sessions Judge as well as the order of issuance of process, passed by the learned Judicial Magistrate First Class, Telhara.

05] I have heard Mr. Charlewar, learned advocate for the applicants, Mr. Chutke, learned APP for non-applicant No.1, Mr. Dable, learned advocate for non-applicant No.2/complainant and Mr. Firdos Mirza, learned advocate for non-applicant Nos.4 to 8. Perused the record and proceedings.

06] The learned advocate for the applicants submitted that the facts stated in the complaint by itself are sufficient to conclude that a civil dispute with a concluded contract between the parties was sought to be given a flavour of the criminal offence. The learned advocate submitted that the substantive civil suit filed for recovery of this amount was dismissed by the learned Civil Judge (Junior Division), Telhara by judgment and order dated 23rd January, 2008. The learned advocate for the applicants have placed on record the copy of the judgment and order dated 23rd January, 2008 passed in Civil Suit No.05/2003. The learned advocate took me through this judgment and pointed out that the finding on the main issues has been recorded against the non-applicant No.2/complainant. The learned advocate, therefore, submitted that

the non-applicant No.2/complainant did not file appeal against this judgment and order. The learned advocate submitted that since the judgment and order passed by the Civil Court has attained the finality, nothing survives in the criminal complaint, which is based on the same set of facts. The learned advocate further submitted that the criminal complaint *qua* the accused Nos.19 to 23 has been dismissed by this Court *vide* judgment dated 14th January, 2021, passed in Criminal Application (APL) No.517/2012. The learned advocate took me through the report of the inquiry submitted by the police as well as the report submitted by the Deputy Chief Executive Officer, Zilla Parishad, Akola and submitted that in both these reports, a concrete opinion has been recorded that only the accused No.18, who at the relevant time was the Secretary of the Gram Panchayat, was responsible for the so-called offence. The learned advocate submitted that the perusal of the complaint in entirety would show that no allegation of any forgery, cheating or fabrication of document has been made against the applicant Nos.1 to 17. The learned advocate submitted that, as stated in the Resolution of the Gram Panchayat, Hiwarkhed dated 18th June, 2001, the liability of payment was accepted and acknowledged. The learned advocate submitted that this Resolution was neither withdrawn nor alleged to have been

manipulated. The learned advocate submitted that the deceased accused No.18 was found responsible for creation of some of the documents by the Deputy Chief Executive Officer, Zilla Parishad, Akola. The learned advocate submitted that perusal of the complaint at the face value would indicate that no offence has at all been made out against these applicants.

07] The learned advocate for the non-applicant No.2/complainant submitted that the dismissal of the complaint against the accused Nos.19 to 23, cannot enure to the benefit of the applicant Nos.1 to 17. The learned advocate submitted that merely because of the dismissal of the civil suit on the same set of facts for recovery of the said amount, the criminal liability, which has been *prima facie* established, cannot become non-existent. The learned advocate submitted that while deciding the challenge to the correctness and legality of the order of issuance of process, the probable defence of the accused persons cannot be taken into consideration. The learned advocate submitted that the police during the course of inquiry found that some documents were fabricated to avoid the liability of the payment to the complainant. The learned advocate submitted that the perusal of the facts stated in the complaint, the verification statement of the complainant, the

report of the police and the report submitted by the Deputy Chief Executive Officer would show that *prima facie* case has been made for the commission of the offences by the applicants, for which, the process has been issued against them. The learned advocate submitted that the learned Additional Sessions Judge while deciding the revision application has taken all these facts into consideration. The learned advocate in support of his submission that case has not been made out to quash the criminal complaint and the accused persons would get an opportunity to cross-examine the witnesses before framing the charge and demonstrate that no case is made against them, has relied upon the decision in the case of *Shri Naresh Gupta Vs. State of Goa Through Public Prosecutor* [2017 ALL MR(Cri.) 437].

08] In order to appreciate the submissions, I have minutely perused the record and proceedings. It is to be noted at the outset that the complaint against the accused Nos.19 to 23 has been dismissed on the ground that no specific role was attributed to the accused Nos.19 to 23 in the commission of the offence. The allegations in the complaint against these accused were found vague and general. The order of issuance of process against the accused Nos.19 to 23 was found illegal. In my view, this fact is

required to be borne in mind while appreciating the submissions.

09] The perusal of the complaint would show that no specific allegation has been made against the accused No.1 to 17 in the matter of fabrication of the documents. The criminal complaint was filed when the documents were placed on record in the evidence on behalf of the Gram Panchayat in the civil suit. The civil suit was filed for recovery of the money. Before proceeding to consider the averments made in the complaint, it would be necessary at this stage to state that the civil suit for recovery of the money was dismissed on the ground that receipts placed on record by the non-applicant No.2/complainant in the civil suit were issued in the name of the son Anurag. The Civil Court recorded the finding that the Gram Panchayat, Hiwarkhed had not purchased iron, cement and other construction materials worth Rs.64,450/-. Similarly, the Civil Court recorded the finding that the officials of Gram Panchayat had not accepted Rs.10,000/- and in token of the same had not issued the receipt in favour of the complainant. In my view, the findings recorded by the Civil Court against the complainant on similar set of facts in recovery suit cannot be ignored in *toto*. The said judgment passed by the Civil Court has attained finality inasmuch as the same was not

questioned in appeal by the complainant. Perusal of the judgment in the civil suit shows that the facts proved in the civil suit were totally different from the facts averred in the complaint in respect of the same transaction. The question is, whether the judgment of the Civil Court can be given some weightage while deciding the questions arising in this application. It is true that while deciding the proceeding, challenging the order of issuance of process, the probable defence of the accused cannot be taken into consideration. It needs to be stated that simple defence of the accused and the defence of accused converted into judicial finding on same set of facts, are two different and distinct things. If the fact in issue, including the defence of the accused, is subjected to evaluation and made the basis of the judicial decision, the same cannot be ignored in *toto*. In my view, therefore, the judgment of the Civil Court in this case cannot be completely overlooked. If this judgment is taken into consideration, it would show that the non-applicant No.2/complainant was not able to prove the transaction itself and, therefore, he was not found entitled to get decree for recovery of the money. This is one important aspect. Besides, it is necessary to see, whether the facts stated in the complaint are supported by the other materials to continue the complaint against the applicants.

10] After recording the verification statement of complainant, the learned Magistrate found that it was not sufficient to issue the process against the applicants. The learned Magistrate, therefore, directed the police to conduct the inquiry. On receipt of the report of the police, the learned Magistrate found that further inquiry is required to be made and accordingly the learned Magistrate directed the Chief Executive Officer, Zilla Parishad, Akola to conduct the inquiry and submit the report. The report was submitted by the Deputy Chief Executive Officer, Zilla Parishad, Akola. On perusal of the reports, the process was issued. It is pertinent to note at this stage that on receipt of the police report and the report of the Deputy Chief Executive Officer, the learned Magistrate was pleased to direct the concerned Authority to conduct the re-audit of the Gram Panchayat. The said order was challenged by the non-applicant No.2/complainant in this Court by filing Criminal Application No.3641/2009. This Court by order dated 8th March, 2010 was pleased to partly allow the said criminal application and set aside the order dated 2nd November, 2009, passed by the learned Judicial Magistrate First Class, directing the re-audit. In this context, it would be necessary to see the report of the police.

11] The perusal of the police report would show that on the basis of the collected material, the Police Officer was not in a position to give a concrete opinion/report. The Police Officer, therefore, stated in the report that in order to fix the responsibility of a particular person from the Gram Panchayat, the audit of the Gram Panchayat is required to be made. After this report dated 25th June, 2009, the learned Magistrate *vide* order dated 1st August, 2009 was pleased to direct the Ex-officio Chairman, Standing Committee, Zilla Parishad, Akola to conduct the inquiry and submit the report. The Deputy Chief Executive Officer conducted the inquiry and submitted the report dated 20th August, 2009. In this report, the Deputy Chief Executive Officer categorically stated that except Village Development Officer Shri S.M. Rahate, no other person was responsible for the acts stated in the complaint. The Deputy Chief Executive Officer also found that the construction of the drainage was not at all undertaken by the Gram Panchayat. Similarly, he observed that there was no record in the Office of the Gram Panchayat with regard to the supply of the materials by the non-applicant No.2/complainant to the Gram Panchayat. The perusal of the order passed by the learned Judicial Magistrate First Class dated 15th April, 2010 would show that the learned Magistrate has not taken this fact into consideration. In

view of this report, the learned Magistrate was required to record some reasons on the basis of the available material not to rely on this report. In my view, the reports submitted by the police as well as by the Deputy Chief Executive Officer, Zilla Parishad, Akola, do not support the facts stated in the complaint. A grievance has been made by the applicants that the learned Magistrate was duty bound to record the reasons before passing the order of issuance of process. I am in full agreement with this submission, because the inquiry report, submitted by the Deputy Chief Executive Officer, Akola, was contrary to the facts stated in the complaint. In my view, if the reports are considered in juxtaposition with the facts stated in the complaint, it would show that the case was not made out for issuance of process.

12] There is one more ground to accept the contention of the applicants. Even the allegations made in the complaint are taken at their face value, it would show that it was a civil dispute based on concluded contract between the accused persons and the complainant. The allegations further reveal that there was breach of the concluded contract by the officials of the Gram Panchayat. The cause of action for filing the complaint is based on the evidence led in the civil suit by the witness of Gram Panchayat. On the basis of

that evidence, the complainant stated that the documents produced before the Civil Court were forged and fabricated. The Civil Court found that the documents were primarily in the name of the son of the complainant. The documents produced on record, which were in the name of the complainant, were found contrary to the claim of the complainant in the civil suit. In the civil suit, the complainant pleaded that the documents/receipts were issued in his name. The Civil Court has recorded the finding that in the Gram Panchayat Resolution as well as in the receipts, the name of son of the complainant was mentioned. The perusal of the complaint would show that the complainant has stated that the Resolution was pursuant to his agreement with the officials of the Gram Panchayat. Similarly, he has stated that the receipts were issued in his name. In view of this, I am of the view that the basic ingredients of the alleged offences have not been made out. The facts, stated in the complaint and revealed from the inquiry report, are sufficient to conclude that a civil transaction is sought to be given a flavour of the criminal offence. The material on record is not sufficient to sustain the order of issuance of process and also the order passed by the learned Additional Sessions Judge in the revision application. Therefore, the application deserves to be allowed.

13] Accordingly, the application is **allowed**. The order passed by the learned Judicial Magistrate First Class, Telhara dated 15th April, 2010 in Regular Criminal Case No.8/2007 is quashed and set aside. The order passed by the learned Additional Sessions Judge, Akot dated 8th June, 2012 in Criminal Revision No.27/2010 is also quashed and set aside. The Regular Criminal Case No.8/2007 is dismissed against the accused Nos.1 to 17 (applicant Nos.1 to 17 in this proceeding).

14] The Regular Criminal Case No.8/2007 has already been dismissed against the accused Nos.19 to 23. The accused No.18 is reported dead. The learned Magistrate would, therefore, be required to pass an appropriate order in respect of deceased accused No.18.

15] Rule is made absolute in the aforesaid terms. The application stands disposed of.

(G. A. SANAP, J.)

Vijay