



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 163 OF 2022

Balaji S/o Baliram Bande,
Age : 58 years, Occu : Social Work,
Member APMC Mukhed
from Vividh Karyakari Seva
Sahakari Sanstha Mukhed,
presently Vice-Chairman,
R/o Shivaji Nagar, Mukhed,
Tq. Mukhed, Dist. Nanded

.. Petitioner

Versus

1] The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai 400 032

2] The Superintendent of Police,
Nanded Dist. Nanded

3] The Police Inspector,
Police Station, Mukhed,
Tq. Mukhed, Dist. Nanded

4] Directorate of Marketing,
Maharashtra State, Pune
Central Building, 3rd Floor, Pune

.. Respondents

WITH

CRIMINAL APPLICATION NO. 1525 OF 2022

(Khushal S/o. Shankarrao Patil and Anr.Vs.The State of Maharashtra and others)

...

Advocate for petitioner : Mr. S.B. Gastgar

Addl.PP for the respondent – State : Mr. M.M. Nerlikar

Advocate for the applicants in 1525/2022 : Mr. D.J. Choudhary

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**
DATE : 16-02-2024

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is seeking following relief :

“B] By issuing writ of Mandamus or any other writ, order or direction in the like nature direct the respondent No. 2 and 3 to register F.I.R. against the concerned Board of Directors including Chairman, Vice-Chairman, Secretary and others who involved in allotment of total 106 plots during the year 2000 and 2001 from Sub-Market Committee Jamb (Bk.) Tq. Mukhed Dist. Nanded as per report dated 20.11.2020 forwarded by Police Station Mukhed to Superintendent of Police Nanded for further against the concerned Board of Directors including Chairman, Vice-Chairman, Secretary and others who again in the year 2021 illegally allotted 30 plots and conduct thorough investigation into the matter. ”

3. The learned advocate for the petitioner would take us through the record and would strenuously submit that there is rampant misappropriation by the office bearers of the Agricultural Produce Market Committee (**APMC**), while allotting the plots to the members by different lease deeds. He would submit that without having previous sanction under section 12(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, the plots were allotted by executing lease deeds for a meager amount of Rs.500/- per year that too for 34 years. Agricultural land which was purchased by the APMC was not even converted to non-agricultural use. The petitioner being member of APMC had reported the matter to Police and enquiry has been conducted by the Police Inspector of Mukhed Police Station. He submitted report but still no criminal action has been initiated by registering the FIR. He would advert our attention to the report of the Police Inspector (**Exhibit – ‘O’**). He would, therefore, submit that this is a fit case wherein this Court can exercise the powers

under Article 226 of the Constitution of India for directing registration of the crime.

4. Learned advocate for the petitioner places reliance on Division Bench decisions of this Court in :

i) Raghunath S/o Tukaram Sonkamble Vs. The State of Maharashtra and others (Criminal Writ Petition no. 530 of 2018 decided on 26 March 2019)

ii) Rajabhau S/o. Shriram Phad Vs. The State of Maharashtra and others (Criminal Writ Petition no. 1309 of 2018 decided on 10 June 2019)

5. Per contra, the learned APP would oppose the petition. He would submit that the allegations are in respect of functioning of the APMC which is under supervision and control of the Marketing Federation. The Assistant Registrar of the Co-operative Societies has submitted the affidavit in reply on behalf of the respondent no. 4 who is a Director of Marketing, Maharashtra State. He would submit that the affidavit is in detail and expressly mentions as to how sanction was granted to the lay out plan by the letter dated 09-07-2015 under section 12(1) of the Act. If the petitioner was aggrieved by such allotment, remedy of appeal under section 52(B) was available before the State government. The petitioner never resorted to it.

6. He would further submit that accounts of the marketing committee are audited annually by the auditors of the Co-operative Department as mandated by rule 116(2) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967. He

would submit that it is the stand of the respondent no. 4 in the affidavit in reply that at the most, it could be a matter of some irregularity and necessary steps are being taken to streamline the affairs of the APMC in question. He would specifically advert our attention to the statement in the affidavit in reply in paragraph no. 13, wherein, it has been expressly mentioned that no loss has been caused to the APMC and there was no misappropriation.

7. Learned APP Mr. Nerlikar would also advert our attention to the Police report (**Exhibit – ‘O’**) and submits that even this report does not indicate about there being any misappropriation or any loss having been caused to the APMC.

8. Lastly, the learned APP would submit that if at all the petitioner is still interested in setting the criminal law in motion, he can resort to appropriate efficacious remedy of filling a private complaint under section 200 of the Code of Criminal Procedure or by soliciting a direction under section 156(3) of the Code of Criminal Procedure.

9. Having heard both the sides and having perused the record, in our considered view, the petition is without any merits.

10. All the allegations are in respect of the functioning of the APMC, Mukhed and the alleged misappropriation in allotment of the plots. True it is that in the Police report (**Exhibit – ‘O’**), the concerned PI has mentioned that the then chairman and secretary of the APMC

had purchased the land without the permission of the Director of Marketing. There was no mutation. There was no lay out and the plots were allotted without previous sanction. Though according to the ready reckoner, valuation of the land was Rs.1,71,000/-, the chairman and the secretary of the APMC valued the land at Rs.45,000/- and thereby has cheated the State government and the APMC. It also mentions that when it was expected that each land holder would be liable to pay development charges @ Rs.10,000/-, lesser development charge was recovered in respect of the same. Even the development charges were not recovered and consequently, there was a loss of the government and the APMC to the tune of Rs.6,65,000/-.

11. As is pointed out by the learned APP, Director of Marketing which was added subsequently as respondent no. 4 in view of the peculiar state of affairs. The affidavit filed on its behalf clearly refutes any loss or misappropriation. This affidavit in paragraph no. 13 and 14 mentions as under:-

"13. I say and submit that, as provided under Rule 116 Sub-rule (6A), the Auditor shall Report to the Committee and the Director of the offices authorized by him, in this behalf, any material defect or irregularity observed by him in the expenditure or in the recovery of money due to the Committee on in the accounts of the committee and any loss, waste or misappropriation of moneys or other property, owned by or vested in the committee, if such loss is a direct consequence of neglect or misconduct of persons or person directly or indirectly Responsible for such loss, waste or misappropriation. The Auditor shall send a copy of such report to the Director.

I further say and submit that, the office of Respondent No. 4 has not received any report under sub rule [6A] of rule 116 from Government Auditor during the period 01.04.2000 to 31.03.2022. Hence, it can be inferred that no material defects showing any loss, waste or misappropriation of moneys or other property owned by A.P.M.C.

Mukhed is brought to the notice of Respondent No. 4. Hence, it is crystal clear that, the charges levelled by the petitioner are vague and baseless and no criminal action is required in absence of any statutory report under Sub rule [6A] of rule 116.

14. I say and submit that, the annual statutory audit of the A.P.M.C. Mukhed for the year 2022-2023 is not completed yet. It is submitted that, all the issues raised by the petitioner will be communicated to the Government Auditor for inspection during the course of Audit and action if any required, shall be taken after receipt of statutory audit report."

12. It is to be noted that even the respondent no. 4 has no inhibition, rather expressly mentions that he could initiate action if it is so required, pursuant to some statutory report submitted under Rule 116 sub rule 6(1) of the APMC Rules. This clearly demonstrates that as of now even the respondent no. 4 who is the Director of Marketing is not averse to initiation of action provided there is a statutory audit report. However, he is emphatic in stating that as of now there is no report regarding any misappropriation *albeit* he admits that there are several irregularities which he even seeks to rectify.

13. In our considered view, the petitioner is not entitled to seek any benefit from the orders passed by this Court in the case of **Raghunath S/o Tukaram Sonkamble** and **Rajabhau S/o. Shriram Phad** (supra). The facts in those matters were peculiar which are conspicuously absent in the matter in hand. Rather, in the peculiar facts and circumstances that this Court had exercised the power under Article 226 of the Constitution of India in directing registration of the crime. However, those orders do not lay down any ratio which could be resorted to as is being submitted on behalf of the petitioner.

14. In view of such peculiar state of affairs and the stand being taken by the respondent no. 4, in our considered view, no writ can be issued directing registration of crime for the present.

15. The petition is dismissed.

16. The money deposited by the petitioner pursuant to the order of this Court, for entertaining the petition, shall be refunded to him immediately.

17. Rule is discharged.

18. Criminal Application no. 1525 of 2022 is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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