



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

CRIMINAL APPLICATION NO.608 OF 2021

Nitin Nagnath Raut,
Age: 28 years, Occu: Business,
R/o. 3809, Raut Chal, Barshi,
Tq. Barshi, Dist. Solapur

..Applicant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Kalamb Police Station,
Dist. Osmanabad.
2. Ashok Dharmraj Nandalgaonkar,
Age: 61 years, Occu: Nil,
R/o. Shahu Nagar, Pangri Road,
Beed, Tq. & Dist. Beed.

..Respondents

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Mr. S. S. Randive, Advocate for the Applicant.
Mr. G. A. Kulkarni, APP for Respondent-State.
Respondent No.2 is served.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

Reserved on : 27th SEPTEMBER, 2024.
Pronounced On : 25th OCTOBER, 2024.

JUDGMENT (Per S. G. Chapalgaonkar, J):-

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code seeking quashment of FIR in Crime No.171/2017 dated 06.07.2017 registered with Kalamb Police Station, Dist. Osmanabad for offences punishable under Sections 3, 403, 409, 420, 468, 470, 471 r/w 34 of the Indian Penal Code and consequential criminal proceeding in RCC No.167/2017 pending before Judicial Magistrate First Class, Kalamb.

2. The respondent no.2 lodged report dated 06.07.2017 alleging that since 16.09.2016 he is discharging his duties as Tahsildar at Kalamb. The accused Abhijeet Bhimrao Kharate is discharging duties as Warehouse Manager in warehouses at Kalamb and Yermala since 24.07.2015. At present he has been suspended. The Committee established by Collector Office inspected the record of warehouses at Kalamb and Yermala and reported that accused Abhijeet Kharate has indulged in black marketing of food grains and misappropriated wheat weighing 2932.48 quintals, rice weighing 1859.41 quintals and sugar weighing 86057 quintals. It is consequently alleged that accused Abhijeet Kharate while discharging his duties as public servant at Government warehouses made false entries in the Government record, misused his position as public servant and duped Government for an amount of Rs.1,32,96,051/-. As such, he has committed offence under Section 3 of the Essential Commodities Act and Sections 403, 409, 420, 467, 470, 471 and 34 of the Indian Penal Code. The investigation progressed in pursuance of aforesaid crime and charge-sheet was filed against in all 7 accused persons. Thereafter, supplementary charge-sheet is filed wherein name of applicant figured as accused no.9. He is shown as absconding in the charge-sheet.

3. Mr. Randive, learned Advocate appearing for the applicant submits that applicant has been falsely implicated in aforesaid crime. He was not named in the FIR or even in the charge-sheet. However, in the supplementary charge-sheet, he is shown as accused. There is absolutely no material on record to frame charge and prosecute applicant for offences as alleged. He would further submit that applicant was never called for interrogation by police, but he has been wrongly shown as absconding while filing charge-

sheet. The alleged offences have occurred during the period from July 2015 to July 2017. The audit in respect of transactions of warehouses has been conducted every year. However, no such objection was raised in the audit. The applicant runs his business at Barshi Market Yard in the name of Laxmi-Sopan. He purchases agriculture goods from farmers and sales it in the market. However, charge-sheet falsely states that applicant purchased food grains in connivance with accused no.1 and sold it in black market. The Investigating Officer never called applicant to explain alleged entries in the bank account statement and drawn inference contrary to the record. He would, therefore, urge to quash the FIR and consequential criminal proceeding.

4. Per contra, Mr. Kulkarni, learned APP appearing for the respondent-State submit that the applicant was absconding since the date of registration of FIR. Although name of the applicant is absent in the FIR, it has been surfaced during the course of investigation. He would submit that applicant purchased goods worth Rs.17,21,034/- from accused no.1 and sold to accused no.6- Amol Deshmukh. The receipts of such transactions are seized from shop of accused no.6. Similarly, transactions between accused no.1 -Abhijeet Kharate and applicant are noted in the bank account. On 18.04.2017, amount of Rs.1,02,000/- transferred in the name of Balaji Traders. Similar, transactions are reflected in the bank account of accused no.2 and accused no.5, which shows live link of black marketing of food grains from Government warehouses. There is sufficient material to depict involvement of applicant in commission of offence. The learned APP further submits that applicant is absconding since the date of registration of FIR, hence not entitle to seek relief under inherent powers of this Court.

5. We have considered submissions advanced on behalf of learned Advocates appearing for the respective parties. We have gone through the contents of FIR and charge-sheet. Apparently, FIR dated 06.07.2017 names only accused no.1-Abhijeet Kharate, who was in-charge Warehouse Keeper at Yermala, Tal. Kalamb. However, FIR has been lodged on the basis of enquiry report submitted by Inspection Squad appointed by the Collector Office. As per inspection report, misappropriation of goods worth Rs.1,32,96,051/- has been noted through black marketing of food grains i.e. wheat, rice and sugar. On the basis of aforesaid FIR investigation progressed. During the investigation, it is revealed that applicant has purchased goods misappropriated by accused no.1 and sold in black market. The scrutiny of bank statement of accused no.1 depicts transaction worth Rs.17,21,034/- between accused no.1 and applicant. Further during the search of shop of accused no.6-Amol Deshmukh, receipts of sale of goods received from applicant are found. The charge-sheet notes that applicant was absconding since his name is revealed during the course of investigation. The applicant has been charged for various offences alongwith Section 120-B of the Indian Penal Code. *Prima facie*, consideration of the record indicate that there is sufficient material in the charge-sheet depicting involvement of applicant in commission of offence.

6. Although this Court possesses inherent powers under Section 482 of the Criminal Procedure Code to quash the FIR and criminal proceeding, such power can be sparingly used in appropriate cases in light of parameters of jurisdiction laid down by Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹. It is well settled that falsity of allegations or in depth scrutiny of the material in the charge-sheet or appreciation

¹ AIR 1992 SC 604.

of evidence is not permissible while exercising inherent powers. When, *prima facie*, there is material on record depicting involvement of applicant in the alleged offence and he is absconding till this date, this Court would be slow in exercising inherent powers. Consequently, there is no merit in the application. Hence, Criminal Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE