



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 1736 / 2022

1. Pralhad s/o Laxmanrao Murkute
2. Ambadas s/o Apparao Bade
3. Govind s/o Ambadas Bade

...Applicants

Versus

1. The State of Maharashtra
Through the Investigation Officer,
Sonpeth Police Station,
Tq. Sonpeth, Dist. Parbhani.
2. Anand s/o Bhimrao Kamble

...Respondents

...

Advocate for Applicants : Mr. J.M. Murkute

APP for the Respondent No.1/State : Mr. V.K. Kotecha

None for Respondent No.2

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 22 MARCH 2024
PRONOUNCED ON : 2 APRIL 2024

FINAL ORDER [Per Shailesh P. Brahme, J.] :

. Heard both the sides finally.

2. The applicants are seeking quashment of FIR bearing C.R. No.116/2022 registered with Sonpeth Police Station, Charge-sheet No.25/2023 and Consequential RCC No.14/2023 pending before the Judicial Magistrate First Class, Sonpeth. In all, twenty persons including

the applicants are facing prosecution for offences under Sections 379, 109, 401, 430, 431, 432, 439 read with 34 of Indian Penal Code and under Section 48 (7)(8) of Maharashtra Land Revenue Code.

3. The respondent no.2 lodged complaint on 17.05.2022 stating that on the tip off of a secret messenger regarding illegal excavation and transportation of the sand from river bed, a raid was conducted by police party at the sand spot of Mahatpuri, Taluka Gangakhed, District Parbhani, at about 05:45 am. It was found that there were ten hyva trucks, four pock-lands and twenty KENY/YARI machines being used for excavation of sand from the river bed. The natural flow of the river was found to be obstructed. Sand was found to be stocked and being transported by hyva trucks. The raiding party accosted drivers and enquired with them. It was revealed that without any permit, the sand was directed to be transported on the instructions of applicants and co-accused Vijay Namdeorao Chaphale. It was a sand theft. Accordingly a panchnama was prepared.

4. The offence registered on 17.05.2022 was investigated. A charge-sheet was filed on 16.02.2023 which culminated in RCC No.14/2023. The applicants alongwith seventeen other persons are facing prosecution. Hence, they are before this Court.

5. Learned Counsel for the applicants submits that applicants were not present at the spot and in no way concerned with alleged excavation, transportation and stocking of the sand. It is being submitted that a punchnama was conducted by Tahasildar at about 09:00 am. on 17.05.2022 which does not indicate any overtact. Learned Counsel would submit that there is no incriminating material against the applicants. Their prosecution would be an abuse of process of law.

6. Learned Counsel for the applicants submits that sand spots at Survey Nos.30/1 and 150/3 at Mahatpuri Taluka Gangakhed, District Parbhani were allotted to two different entities by the orders of the Collector on 20.04.2022. There was permission of the Revenue Authority to store the sand at the adjoining lands. Hence the allegations are inherently improbable. He would further submit that without there being any independent action under Section 48 of the Maharashtra Land Revenue Code, no action would lie against the applicants for the offences under IPC. It is further submitted that there is no participation of competent revenue authorities for initiating action against the applicants under Section 48 of the MLR Code. He seeks to rely upon order passed by this Court on 19.03.2024 in Criminal Application No.1924/2022, under similar set of facts.

7. Learned APP Mr. V.K. Kotecha opposes the submissions of the

applicants. He would submit that there is breach of conditions imposed while granting permit for excavation of the sand. He would submit that vehicles and the machinery were seized from the spot and there is incriminating material to show involvement of the applicants. He would point out that consent letters given by the owners of the land which are collected during the investigation, do show involvement of the applicants in offence. He would vehemently submit that there is cogent material to show offence of mischief committed by the applicants in connivance with other accused by obstructing natural flow of water and causing pollution.

8. We have considered rival submissions of the parties. We have also gone through the papers of investigation, as the charge-sheet is placed on record. It reveals that two sand spot at Survey No.30/1 and 150/3 at Mahatpuri Taluka Gangakhed, District Parbhani, have been allotted for the excavation of the sand. The raid conducted on 17.05.2022 at 05:45 a.m., pertains to this location. A sand spot at Survey No.30/1 has been allotted to New Shriram Tyre and Oil Depot through Proprietor – Vijay Namdeorao Chaphale, accused no.1, by Collector on 20.04.2022. He was permitted to excavate 5852 brass of sand upto 09.06.2022. Similarly, one Sarasvati Trading Company through Proprietor – Mr. Kerba Bhendikar was allotted sand spot at Survey No.150/3 for excavation of 4561 brass of sand upto 09.06.2022.

9. In the present matter, accused no.1 is Vijay Namdeorao Chaphale, who is the Proprietor of New Shriram Tyre and Oil Depot, is not before this Court. The allegations against the applicant no.1 are that he is the owner of 20 KENY/YARI machines found to be installed at the spot. The allegations against the applicant no.2 and 3 are that they are said to have abetted the offence and have acted in collusion with other accused persons.

10. We have gone through panchnama prepared on 17.05.2022, statements of the witnesses and the charge-sheet. There is no material to prima facie indicate that applicants were in collusion with the Proprietor of a permit holder or the drivers accosted at the spot or any other accused persons. Applicants were not present at the time of raid. The statements of the members of the raiding party would only indicate that vehicles and machines were found at the spot and alongwith sand stock. The statements further show that there was illegal excavation and transportation of the sand by causing obstruction to the river bed. No incriminating role can be attributed to the applicants.

11. Learned Counsel for the applicants would refer to panchnama conducted on 17.05.2022 at 09:00 a.m., by Tahasildar Gangakhed. It shows that ten hyva trucks and four pock-land machines and ten KENY

machines were seen on the spot. The spots were allotted to two different permit holders. No excess excavation of sand was found on the spot. It is further mentioned that no illegal excavation was noticed since the sand spots have been allotted to the permit holders. We find that this panchnama prepared by independent competent revenue authority is admissible in evidence. It is inconsistent with the theory of the prosecution. Learned Counsel for the applicants has rightly referred to the panchnama.

12. No independent action under Section 48 of Maharashtra Land Revenue Code has been taken against the licence holders of the sand spot. We do not find participation of the competent revenue authorities in carrying out raid or during investigation. Under these facts and circumstances, no offence can be attracted to the extent of the applicants. We have already taken a view in similar set of facts vide our order dated 19.03.2024 passed in Criminal Application No.1924/2022 in the matter of **Rameshwar Uttamrao Yadav and Ors. Vs. State of Maharashtra and Anr.** The relevant paragraphs are as follows :

"14. It appears that simultaneously, pursuant to the raid, the Assistant Superintendent of Police, Gangakhed Sub Division, had directed Tahsildar Sonpeth and pursuant thereto he conducted a panchnama (Exh.'D') which has also gone unchallenged and reads that various trucks/machinery were found in the river bed or on the bank of it but pertinently it was not seen that sand was excavated from the river bed. Since, apparently, the applicant no. 13 Sanjiv Munde was given a contract for excavation and transport of sand from the spot, its possession was delivered to him and even the Tahsildar did not find any sand having been excavated, in our considered view, it

would be sheer abuse of process of law to allow the applicants to face the prosecution.

15. *Even if, as laid down in the matter of State (NCT of Delhi) Vs. Sanjay, (supra), though there could be simultaneously a charge under the Mines and Minerals Act for illegal excavation of sand from the river bed without licence or permit and also under Section 379 of the Indian Penal Code, admittedly, no such offence under the Mines and Minerals Act has been registered against applicant no. 13-Sanjiv Munde or any other applicant. Even no action has been initiated even under Section 48 of the Maharashtra Land Revenue Code, 1966.*

16. *If the revenue officials have not found any illegality in the alleged act attributed to the applicants, so as to initiate any prosecution under the Mines and Minerals Act or even under Section 48 of the Maharashtra Land Revenue Code, 1966, in our considered view, both these circumstances would go to the root of the allegations which form basis for prosecuting the applicants for commission of theft of sand from the river bed.*

17. *No explanation is coming forth from the respondents as to why action has not been initiated against applicant no. 13-Sanjiv Munde under the Mines and Minerals Act and under the Maharashtra Land Revenue Code. If this be so, in our considered view, the case is squarely covered by Bhajan Lal (supra).*

18. *The Application is allowed. Crime No. 112/2022 registered with Sonpeth Police Station, District Parbhani, for the offences punishable under Sections 379, 431, 432, 439 read with Section 34 of the Indian Penal Code is quashed and set aside as against the applicants."*

13. Learned APP has submitted that there is breach of conditions of the permit issued by the Collector for excavation of the sand. As the applicants are not the permit holders and there is nothing on record to show that they were acting in collusion with the permit holders, this submission does not hold any merit. It is further submitted that the applicants are involved independently for offences under Sections 430, 432, 439 of IPC which are very serious. We again find that in the absence of any material to indicate abetment by the applicants or any overtact on their part, it would not be permissible to prosecute them for any offence.

14. Learned APP lastly has drawn our attention to consent letters collected during the course of investigation to show that permission to store sand was given which are being misused. It reveals that the applicants are not privy to the contract/agreement. So far as applicant no.2/Ambadas Apparao Bade is concerned, he is said to be owner of Survey No.150/3 which was rented out to permit holder for excavation of the sand. That is not adequate to connect him to the crime in question.

15. Considering overall circumstances, we find that the application succeeds in view of parameters laid down by the Supreme Court in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.**, AIR 1992 SC 604. We, therefore, pass following order :

ORDER

(i) The Criminal Application is allowed.

(ii) FIR bearing C.R. No.116/2022 registered with Sonpeth Police Station, Charge-sheet No.25/2023 and Consequential RCC No.14/2023 pending before the Judicial Magistrate First Class, Sonpeth, are quashed and set aside.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE