



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1924 OF 2022

- 1) Rameshwar s/o Uttamrao Yadav
 - 2) Samadhan s/o Narayan Bidgar,
 - 3) Sugriv s/o Ashruba Nagargoje
 - 4) Bharat s/o Shivaji Suryawanshi
 - 5) Shankar s/o Baban Phad
 - 6) Nazir s/o Subhan Bagwan
 - 7) Sanjay s/o Ankush Rathod
 - 8) Ashok s/o Anna Vhavle
 - 9) Arjun s/o Ganpati Tiwar
 - 10) Balbhim s/o Vajjnath Dumane
 - 11) Haribhau s/o Keshavrao Ujgare
 - 12) Dilip s/o Datta Rathod
 - 13) Sanjiv s/o Janardhan Munde,
 - 14) Atul s/o Rameshwar Yadav
- ... Applicants

VERSUS

- 1) The State of Maharashtra,
Through Police Station Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
 - 2) Sanjay s/o Panditrao Raswe,
Age 40 years, Occ. Service,
R/o. Police Station Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
- ... Respondents

...

Advocate for the Petitioners : Mr. J. M. Murkute
A.P.P. for Respondents/State : Mr. V. M. Jaware

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

RESERVED ON : 06.03.2024
PRONOUNCED ON : 19.03.2024

ORDER : (MANGESH S. PATIL, J.)

This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of 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.

2. We have heard both the sides finally at the stage of admission.

3. The respondent no. 2 lodged the F.I.R. on 11.05.2022, on the basis of which the crime was registered with the allegations that he was serving as a police Naik since three years before the F.I.R. at Sonpeth police station. It is alleged that on that day, at around 4.30 a.m., he along with A.P.I. Borkar and other police officers were on patrolling duty at village Khadka. They met Shri. Shrenik Londha, Assistant Superintendent of Police, Gangakhed Sub Division, who was present with couple of police constables. They told the first party about having received a tip off that sand was being illegally excavated and stolen away from the Godavari river bed by using boats, pocklands and hyva trucks. Both these police parties then went to the spot at around 5.30 a.m. They noticed that couple of boats were being used and with the help of pocklands sand was being loaded in the hyva trucks. Having seen the police, the truck drivers unloaded the sand at the spot. Some fled away with the trucks, some left behind the trucks. Some of them were accosted and on enquiry told that they had no permit or licence to carryout excavation and were doing so on the instructions of one Sanjiv Munde (applicant no. 13). There were four pocklands, seven to eight hyva trucks, some of the drivers of which were accosted. All this machinery was seized and the F.I.R. was lodged with the allegations that sand was being stolen from the river bed thereby causing wrongful loss to the Government.

4. Learned advocate for the applicants would submit that they are 14 of the 18 accused who have been implicated in the crime.

5. The learned advocate for the applicants would submit that the applicants are being falsely implicated merely on suspicion. They have not committed any crime. Nothing incriminating could be traced against them. None of them are the owners or operators of the vehicles seized neither

they have purchased sand much less have any stock of it. The investigation has not been carried out properly.

6. The learned advocate then submitted that in fact the Collector Parbhani conducted an auction of the sand site at village Mohala, Tq. Sonpeth, on 05.05.2022, which was granted to the proprietary firm of accused Sanjiv Janardhan Munde, who is applicant no. 13 for an amount of Rs. 71,95,786/-. A copy of the order in his favour issued by the Collector is annexed to the application (Exh. B). He was handed over possession of the site on 07.05.2022 by the Tahsildar. A panchnama was conducted (Exh. D). He would submit that even a royalty receipt was received by the applicant no. 13-Sanjiv Munde on 15.05.2022. It is only thereafter the work could be started with effect from 10.05.2022. All the machinery was kept ready for carrying out the work of approach road to the sand site for excavating and transporting the sand, when the police conducted the raid and seized the entire machinery and lodged a false F.I.R.

7. The learned advocate for the applicants would then submit that on the same day, Tahsildar Sonpeth, Circle Officer Avalgaon and Talathi Avalgaon visited the spot and prepared the panchnama. The description of the machinery in the panchnama and the one mentioned in the F.I.R. does not tally. The panchnama (Exh. D) merely shows that two pocklands were standing in the river bed, one of which was not in a working condition. The vehicles were standing on the bank of the river and couple of boats were in the river. No sand was excavated from the river bed. Consequently, even no action was initiated under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966 or the Mines and Minerals (Development and Regulation) Act, 1957, and the offence was wrongly registered without there being any crime. He would submit that even the ingredients for constituting the offences punishable under Sections 379, 431, 432 and 439 of the Indian Penal Code can not be made out. It would be abuse of process of law to make the applicants face the prosecution. Case is squarely covered by

category (1) of **State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604**, and the F.I.R., charge-sheet and the criminal case be quashed and set aside.

8. Per contra, the learned A.P.P. would submit that extraordinary power to quash the crime and the criminal case need not be invoked in the peculiar facts and circumstances. Investigation has been carried out. There are statements of the witnesses to demonstrate that the entire machinery and some of the applicants were present at the spot. Sand was being excavated and was being loaded on the trucks. Having seen the police party some of them had fled. The prosecution deserves to be extended an opportunity to substantiate the charge. It is not a matter of false implication.

9. The learned A.P.P. would further submit that if the applicant no. 13- Sanjiv Munde had received a contract and was allotted the spot, there was no reason for some of the applicants to flee from the spot. This conduct is relevant under Section 8 of the Evidence Act.

10. Lastly, by referring to the decision in the matter of **State (NCT of Delhi) Vs. Sanjay; (2014) 9 Supreme Court Cases 772**, he would submit that even if it is a matter of commission of crime under the Mines and Minerals (Development and Regulation) Act, 1957, simultaneously, an offence under Section 379 of the Indian Penal Code can be invoked.

11. We have heard both the sides and perused the papers. Though the applicants are invoking extraordinary jurisdiction of this Court seeking quashment of the crime, in our considered view, the facts and circumstances of the matter in hand are peculiar.

12. Though it is being alleged that all the applicants, together with the huge machinery were found at the spot and were excavating sand and were about to transport it illegally, the applicants have produced a copy of the order passed by the Collector Parbhani, dated 05.05.2022, allotting the

specific survey numbers/Gat numbers from the sand spots of village Mohala, Tq. Sonpeth, from the river bed and permission to excavate sand to the tune of 5300 brass and the period was to end on 09.06.2022. A copy of the order is annexed to the application (Exh. B) which has not been controverted by the respondents much less by filing any affidavit in reply. As can be seen, even a copy of the communication addressed by Tahsildar, Sonpeth, to the Additional Collector Parbhani, dated 07.05.2022 (Exh. C) is annexed to the application, which has also not been controverted, expressly mentioning about possession of the sand spot having been delivered to the applicant no. 13-Sanjiv Munde.

13. The raid was effected in the wee hours of 10.05.2022. Though huge machinery was seized and some of the applicants and other accused were accosted on the spot, that raid was effected after the sand spot was handed over to applicant no. 13-Sanjiv Munde.

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.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-