



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 811 OF 2018

Keshav s/o Rama Muddewad,
Age: 40 years, Occu: Councilor,
R/o Samtanagar, Ward No.19,
Bhokar, Tq. Bhokar, Dist. Nanded.

... PETITIONER

V/s.

1. The State of Maharashtra
Through Police Station Bhokar,
Tq. Bhokar, Dist. Nanded.
2. Ashutosh s/o Digambarrao Chinchalkar,
Age: 42 years, Occ: CEO,
R/o Devrai Nivas, Near Bharmakumari,
Rampur Road, Deglur, Tq. Deglur,
Dist. Nanded
3. Harikalyan s/o Janardhan Yalgatte,
Age: 35 years, Occ: CEO,
R/o Nagar Parishad, Bhokar,
Tq. Bhokar, Dist. Nanded.
4. Swati Kshatriy,
Age: 40 years, Occ: Accountant,
R/o Nagar Panchayat Ardhapur,
Tq. Ardhapur, Dist. Nanded.
5. Raju Sheshrao Padade,
Age: 29 years, Occ: Engineer,
R/o Nagar Parishad, Bhokar,
Tq. Bhokar, Dist. Nanded.
6. Suwarnabai w/o Sambhaji Waghmare,
Age: 40 years, Occ: Councilor,
R/o Nagar Parishad, Bhokar,
Tq. Bhokar, Dist. Nanded.

7. Sambhaji s/o Manika Waghmare,
Age: 42 years, Occ: Contractor,
R/o In front of Court, Bhokar,
Tq. Bhokar, Dist. Nanded.
8. Sahebrao s/o Hari Gaikwad,
Age: 35 years, Occ: President,
Saibaba Society Bhokar,
R/o Nagar Parishad, Bhokar,
Tq. Bhokar, Dist. Nanded.

... **RESPONDENTS**

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Mr. Santosh Bhosale, Advocate for the Petitioner
Mr. V.M. Chate, APP for the Respondent-State
Mr. Shriram Deshmukh & Rakshanda Jaikswal h/f. Devang Deshmukh,
Advocate for the Resp. Nos.6 & 7
Ms. Akanksha Pawar h/f. Ram Shinde, Advocate for the Resp. Nos.3 to 5

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CORAM : Y.G. KHOBRADE, J.
RESERVED ON : 13.11.2024
PRONOUNCED ON : 22.11.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides.
2. By the present petition under Article 226, 227 read with Section 482 of the Code of Criminal Procedure, 1973 (for brevity Cr.P.C.), the Petitioner/Original Complainant takes exception to the order dated 12.06.2018 passed by the learned Sessions Judge, Bhokar in Criminal Revision No.11/2018, whereby the Bhokar Police Station was directed to register a crime against the Respondent No.2-Ashutosh Digambarro Chinchalkar,

Respondent No.3-Harikalyan Janardhan Yalgatte and Respondent No.8-Sahebrao Hari Gaikwad and to make inquiry whether they have committed cognizable offence as alleged by the present Petitioner and partly set aside the order dated 17.04.2018 passed by the learned J.M.F.C. Bhokar in Misc. Criminal Application No.51/2018.

3. In nutshell the facts giving rise to the present petition is that the Petitioner was Councilor of Bhokar Municipal Council. The Accused No.1-Ashuthosh Digambarrao Chinchalkar was the C.E.O. of the then Bhokar Municipal Council. Accused Nos. 2, 3 and 4 are the Chief Officer, Accountant and Engineer of Bhokar Municipal Council. Accused No.5 is a Member of Municipal Council. Accused No.6 was Mukadam. The Municipal Council Bhokar had allotted tender for collection of garbage in favour of Saibaba Sevabhavi Sanstha and Accused No.7 is the President of said Sanstha. According to the Petitioner/Complainant on 13.06.2017, the Municipal Council had flouted a tender for collection and disposal of garbage. In response to the said tender, the Sanstha through its President and other two associates submitted their tender. While submitting the tender the Accused No.7 disclosed about having 5 vehicles, however, 5-6 vehicles are of Municipal Council Bhokar. The Accused No.1 in collusion with the Accused Nos. 5, 6 and 7 allotted the tender to the said Sanstha to misappropriate the public funds. The Accused No.7 is the relative of Accused Nos. 5 and 6 and without obtaining any bond

provided under Section 16 and 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, said tender was allotted in favour of the Accused No. 7. So also, the Accused No. 6 sanctioned the bill of lakhs of rupees. Similarly, the Accused No.3 – Accountant has not taken proper care while releasing the bill. Further the Gram Panchayat, Ritha had allotted land in the year 2012 to Municipal Council Bhokar for dumping of garbage, but said land was not acquired by the Municipal Council, therefore, no center for dumping the garbage and destruction of it was operating. However, the Accused No. 7 submitted false and fabricated bills thereby showing that he has disposed and destructed the garbage.

4. The Petitioner/Complainant further alleged that the Accused No.1- C.E.O. accepted the lowest amount of e-tender of Saibaba Sevabhavi Sanstha who had no previous experience of such work and still the tender was accepted. It is further alleged that initially one Smt. Suwarnabai Sambhaji Waghmare was the Councilor of Municipal Council and she was the President of said Sanstha. On 15.02.2016, said Suwarnabai had resigned from the post of President of said Sanstha. The Accused No.4 - City Engineer was given responsibility to look into the matter and control the entire process of cleaning the Bhokar city and destruction of garbage at the dumping ground. Though, the Accused No.7 was not having his own vehicle, he has shown 5 to 6 vehicles for carrying the garbage at the dumping ground, said vehicles are owned by

Municipal Council and on the basis of false and manufactured bills, the accused persons misappropriated the public fund. Therefore, the Petitioner/Complainant had submitted a representation to the Principal Secretary, State of Maharashtra, so also on 31.03.2018, he has lodged a report with the Police Station Bhokar, but no action was taken. Thereafter, on 03.04.2018, the Petitioner/Complainant submitted an application with the Superintendent of Police, Nanded, but no action was taken. Therefore, the Petitioner filed a private complaint bearing Misc. Criminal Application No. 51/2018 and prayed for inquiry under Section 156 (3) of the Cr.P.C. for the offences punishable under Sections 420, 465, 467, 468, 471, 406, 409, 414, 120-B, 166-A read with Section 34 of the Indian Penal Code, 1860 (for brevity I.P.C.).

5. On 17.04.2018, the learned J.M.F.C. passed an order holding that though it is presumed that the allegations leveled in the complaint are based on the documentary evidence and the Court itself can inquire into the allegations/charges by invoking Section 202 to 204 of the Cr.P.C., however, the Petitioner/Complainant is not willing for the said inquiry. Since, the Petitioner/Complainant has not obtained the sanction under Section 197 of the Cr.P.C. as against the Accused No.1-C.E.O., therefore, Ld. J.M.F.C. declined to direct to register the offence. Being aggrieved by the said order the Petitioner/Complainant filed Criminal Revision Application No. 11/2018 under Section 397 of the Cr.P.C. before the learned Additional Sessions Judge, Bhokar,

Dist. Nanded. On 12.06.2018, the learned Sessions Judge passed the impugned order and directed to register the crime against the Respondent No. 2-Ashutosh Chinchalkar, Respondent No.3-Harikalyan Yalgate and Respondent No.8- Sahebrao Hari Gaikwad and directed to inquire as to whether they have committed cognizable offence as alleged by the Petitioner.

6. The learned counsel appearing for the Petitioner canvassed that all the accused persons/Respondents in collusion with each other have committed illegal activities and prepared false and bogus documents and cheated the Government as well as the Municipal Council, however, both the Courts below have failed to consider the averments made in the complaint and passed the order. Therefore, both the orders passed by the Courts below are not sustainable in the eyes of law.

7. It is further canvassed that the learned JMFC, Bhokar passed the order on 17.04.2018 only on the ground that no sanction was obtained from the Competent Authority to prosecute the Accused No.1, however, all the accused in collusion with each other have committed a fraud and cheated the public authority by releasing the bills in favour of the Accused No.7 on the basis of false and fabricated documents and had withdrawn huge amount and deceived the State as well as the Municipal Council Bhokar. Therefore, the accused persons have committed offences punishable under Sections 420, 465,

467, 468, 471, 406, 409, 414, 120-B, 166-A read with Section 34 of the I.P.C., however, the learned JMFC as well as the learned Additional Session Judge, Bhokar ignored the said fact and passed the orders which are not sustainable in the eyes of law. The learned counsel appearing for the Petitioner further canvassed that both the Courts below ignored the fact that allegations leveled against the Respondents-Accused are very much clear about committing the offences. Therefore, it is necessary to register the offences as against all the accused persons. The learned counsel appearing for the Petitioner further canvassed that 5 – 6 vehicles which have been shown by the Respondent No.7 are registered in the name of Bhokar Municipal Council, but those vehicles were shown to be owned by the Respondent No.7 and the same were used for picking up garbage from the city and transporting the same for destruction. Therefore, the Accused No.7 in connivance with other accused used the vehicles of Municipal Council and had drawn the bills, which caused loss to the public funds. Therefore, the accused persons by preparing bogus bills and documents committed the offences punishable under Section 420, 465, 467, 468, 471, 406, 409, 414, 120-B, 166-A read with Section 34 of the I.P.C.

8. The learned counsel appearing for the Petitioner further canvassed that both the Courts below ignored the fact that dumping site of Municipal Council is situated at village Ritha and as per the certificate issued by the Accused No.4-Engineer, there is no other dumping site. Despite this, the

Respondents-Accused submitted report about management of waste regularly, though, the Gram Panchayat Ritha issued a certificate certifying that the proposed dumping site has never been used by the Municipal Council. In spite of said fact, the Respondents-Accused have shown that they are using the said dumping ground and had withdrawn huge amount and committed fraud, however, both the Courts below have failed to consider the said fact and passed the impugned orders, hence prayed for quashing and setting aside the same.

9. Per contra, the learned APP canvassed that the learned JMFC, Bhokar passed an order dated 17.04.2018 and turned down prayer of the Petitioner/Complainant for inquiry under Section 156(3) of the Cr.P.C. on the ground that the Accused Nos.1 to 4 and 6 are public servants, however, no sanction was obtained under Section 197 of the Cr.P.C. to prosecute them. So also, the Accused No.5 is a Councilor, however, no any specific allegations are made against him regarding preparation of false and fabricated documents and cheating the Municipal Council, therefore, the learned JMFC, Bhokar refused for an inquiry under Section 156 (3). The learned APP further canvassed that on 12.06.2018, the learned Sessions Judge passed an order holding that under Section 79-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 prior permission from Competent Authority i.e. the C.E.O. is necessary to file a criminal complaint against the employees of the Municipal Council. The Accused/Respondent Nos. 3 to 6 are the employees of

the Municipal Council and no such permission under Section 79-A of the Act was taken to proceed against them. So also, all the employees/servants have no authority to take any decision. The Accused Nos.1 and 2 are Govt. Servants as they are appointed by the State Govt. and an inquiry under Section 156 (3) of the Cr.P.C. is not maintainable for want of sanction under Section 197 of the Cr.P.C. Though, the Petitioner/Complainant submitted a letter dated 29.12.2017 seeking permission under Section 197 of the Cr.P.C. for prosecuting the former C.E.O./ Accused No.1- Ashutosh Chinchalkar and the present C.E.O. – Harikalyan Yalgatte, but no sanction was granted. However, the learned Sessions Court considered the proviso to Section 190 and presumed about deemed sanction as the proposal for sanction has not been decided for a period of 90 days. So also, after considering the material available on record the learned Sessions Court directed preliminary inquiry to find out whether cognizable offence as alleged by the complainant is made out against the Respondent Nos. 1, 2 and 7 only. Therefore, the impugned judgment and order dated 12.06.2018 is just and proper and no interference is called at the hands of this Court. Hence, prayed for dismissal of the petition.

10. Mr. Deshmukh, the learned counsel appearing for the Respondent Nos. 6 and 7 and advocate Ms. Akanksha Pawar h/f. Ram Shinde, the learned counsel appearing for the Respondent Nos. 3 to 5 supported the findings of the learned Sessions Court. Advocate Deshmukh canvassed that the Respondent

Nos. 6 and 7 are the Councilors and they are not directly or indirectly involved while allotting the tender for collection and disposal of the garbage. However, the Petitioner is having political rivalry with Respondent Nos.6 and 7, therefore, on the false assumption and presumption, the Petitioner has impleaded both these accused though they have not committed any such offence, so also, they are not directly or indirectly involved in preparation and disbursement of bills. Advocate Ms. Akanksha Pawar, the learned counsel appearing for the Respondent Nos.3 to 5 canvassed that the Respondent Nos. 3 to 5 are the public servants appointed by the Municipal Council Bhokar, therefore, necessary sanction for their prosecution is required under Section 197 of the Cr.P.C. and in absence of such sanction the Respondent Nos. 3 to 5 are not liable for the prosecution. However, the Petitioner/Complainant has not obtained the sanction to prosecute the Respondent Nos. 3 to 5. Therefore, the complaint as against the Respondent Nos. 3 to 5 itself is not tenable in the eyes of law. The learned JMFC as well as the learned Sessions Court, Bhokar rightly declined to direct an inquiry under Section 156 (3) of the Cr.P.C.

11. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. Indeed, the Petitioner and the Respondent Nos. 6 and 7 are the Councilors of the Municipal Council. The Petitioner and the Respondent Nos. 6 and 7 are having political rivalry. The Respondent No.2/Ooriginal Accused No.1 is erstwhile C.E.O. of the Municipal

Council. The Respondent No. 3/Original Accused No.2 is the then C.E.O. of the Municipal Council, whereas, the Respondent No. 4- Swati Kshatriy and Respondent No.5- Raju Sheshrao Padade are the employees of the Municipal Council. On the face of record, it appears that on 13.06.2017, the Municipal Council published an advertisement calling upon online tender till 20.06.2017, the terms and conditions and other details of the tender was made available on the website i.e. <http://mahatenders.gov.in>. So also, said tender was to be downloaded w.e.f. 13.06.2017 to 20.06.2017 till 3.00 p.m. The Petitioner has not produced the copy of tender showing the terms and conditions of the tender from the website so also, who are eligible to submit the tender. No doubt, the Respondent No.7 is the President of Saibaba Sevabhavi Sanstha, Bhokar, ii) Mahatma Jyotiba Pule Sanstha and iii) Ramrao Devrao Narwade submitted their tenders and since the tenders of Respondent No. 7 was found lowest (L1), the Accused No.1 had allotted the tender in favour of the Respondent No. 7. Thereafter, on 08.09.2017, the Respondent No.1 issued work order in favour of Saibaba Sevabhavi Sanstha. The Sanstha is a registered trust under the provisions of the Bombay Public Trusts Act, 1950. On 07.10.2016, the Assistant Charity Commissioner, Nanded passed an order in inquiry report No. 411/2016. The Respondent No.6- Suwarnabai Sambhaji Waghmare resigned from the post of President of said Sanstha and Sahebrao Hari Gaikwad, Accused No.7 was elected as the President of the said Sanstha.

Therefore, the said change report was accepted. Needless to say that though the Petitioner/Complainant alleged that all the Respondents in collusion have accepted the tender of the Saibaba Sevabhavi Sanstha for collection and destruction of garbage at the dumping ground, so also, the Respondent No. 7 was shown as the owner of 5 – 6 vehicles, but in fact those vehicles are owned by the Municipal Council. The Respondent No.7 allegedly used those vehicles for collection and destruction of garbage at the dumping ground and on basis of the same, false and bogus bills were drawn which caused heavy financial loss to the Municipal Council.

12. Indeed, on 17.04.2018, the learned JMFC, Bhokar passed an order holding that though the Court can make an inquiry under Section 200 to 204 of the Cr.P.C., but the complainant is not willing for the said inquiry. So also, no sanction to prosecute public servants has been produced, hence it declined to grant the application. On 12.06.2018, the learned Sessions Court passed the impugned judgment and order by holding that as per the provisions of Section 79-A of the Act, prior permission of Competent Authority i.e. C.E.O. is necessary to file any criminal case against the public servant working with the Municipal Council. Though, the Accused-Respondent Nos. 3 to 6 are public servants and working with the Municipal Council, but no such permission was taken to proceed against them for their illegal activities while discharging their duties. So also, the Respondent Nos.1 and 2 are Govt. Servants and no

necessary permission was obtained to prosecute them. Though, the Petitioner submitted a letter dated 29.12.2017 and prayed for permission under Section 197 of the Cr.P.C. to prosecute the Accused No.1- Ashutosh Chinchalkar and Accused No. 2-Harikalyan Yalgatte, so also, neither the sanction was granted nor it was rejected for a period of 90 days, hence it is deemed to have been accorded by the sanctioning authority considering the nature of allegations made in the complaint, preliminary enquiry was directed for commission of cognizable offences against Accused Nos.1, 2 and 7 only. On perusal of allegations leveled in the complaint, it does not reveal that the complainant has obtained sanction to prosecute the Accused No.3- Swati Kshatriy, Accountant, Accused No.4 - Raju Sheshrao Padade, Engineer and Accused No.6- Sambhaji Manika Waghmare, Contractor.

13. No doubt, the Petitioner/Complainant had submitted an application / letter dated 29.12.2017 seeking permission under Section 197 of the Cr.P.C. with the appointing authority to prosecute the Accused No.1- Ashutosh Chinchalkar and Accused No.2- Harikalyan Yalgatte but there was no intention either to accord or reject the sanction for prosecuting them. Therefore, the learned Sessions Court considered about deemed sanction for the prosecution and directed the preliminary inquiry to find out whether commission of cognizable offence is made out against the Respondents-Accused Nos. 1, 2 and 7 only.

14. Further the Petitioner/Complainant has specifically alleged regarding allotment of tender in favour of Saibaba Sevabhavi Sanstha of which the Accused No. 7 is the President, however, the Petitioner/Complainant has not impleaded the Sanstha in whose favour the tender was allotted. Not only this, but the Petitioner also failed to produce the tender copy on record to show what are the terms and conditions prescribed in the tender form. The Petitioner/Complainant only relied on the advertisement published in the newspapers for floating of tender on website of State Government for collection and disposal of waste within the Bhokar Municipal Council. Therefore, whether the use of vehicles owned by the Municipal Council was prescribed is not clear or whether the condition was essential that the person who gets the tender must own and possess the vehicles. There may be a possibility that the person who gets the tender can use the vehicles of Municipal Council and pay the necessary transportation charges / freight. Since, the allegations made in the complaint are against the Accused Nos.1, 2 and 7 only, therefore the learned Sessions Court directed preliminary inquiry against them which does not appear to be illegal and bad in law.

15. In view of the above, the findings does not appear to be perverse and no grounds have been set out to interfere with the same, hence, the petition is liable to be dismissed. Hence, it is dismissed.

16. Accordingly, the Rule is discharged.

[Y.G. KHOBRADE, J.]