



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

CRIMINAL WRIT PETITION NO.1388 OF 2024

Ganesh S/o Sadashiv Rajgire,
Age-38 years, Occu:at present
Working as Executive Engineer,
in the Divisional Office of
M.S.R.T.C., Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Senior Inspector of Police,
City Police station, Osmanabad,
- 2) Deepak S/o Sakharam Jadhav,
Age-33 years, Occu:Service as
Security & Vigilance Officer,
M.S.R.T.C., Osmanabad.

...RESPONDENTS

...
Mr. Balaji Bapurao Yenge Advocate for Petitioner.
Ms. R.P. Gour, A.P.P. for Respondent No.1-State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING ORDER : 27th AUGUST 2024

DATE OF PRONOUNCING ORDER : 20th SEPTEMBER 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. By this Petition, the petitioner is invoking the constitutional

powers of this Court under Article 226 and 227 of the Constitution of India read with inherent powers under Section 482 of the Code of Criminal Procedure, for quashing and setting aside the First Information Report (in short "the FIR") bearing Crime No.345 of 2019 dated 8th December 2019 registered with Osmanabad City Police Station, District-Osmanabad for the offence punishable under Sections 406, 409, 420, 465, 471 read with Section 34 of the Indian Penal Code and charge-sheet No.159 of 2020 dated 22nd December 2020 pending before the learned Chief Judicial Magistrate, Osmanabad.

2. Petitioner is serving as executive engineer in the divisional office of the Maharashtra State Road Transport Corporation (for short "the M.S.R.T.C."), Aurangabad. He is accused No.1.

3. Heard learned Advocate Mr. Yenge appearing for the petitioner and learned APP Ms. Gour appearing for respondent No.1 – State.

4. Learned Advocate for the petitioner is relying on the following citations:-

(1) Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others, (1998) 1 S.C.C. 692,

(2) Rajiv Thapar and others vs. Madan Lal Kapoor, (2013) 3 SCC 330,

(3) Shankar namdeo Gaikwad vs. State of Maharashtra and another, (2021) 4 Bom CR (Cri) 72,

(4) State of Haryana and others vs. Bjajan Lal and others, 1992 Supp(1) SCC 335

(5) International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) and others vs. Nimra Cerglass Technics (P) Ltd. and another, (Criminal Appeal No.2128 of 2011) decided by the Hon'ble Apex Court on 22nd September 2015,

(6) Uma Shankar Gopalika vs. State of Bihar and another, (2005) 10 SCC 336,

(7) Shaileshbhan Ranchhodbhai Patel and another vs. State of Gujarat and others (Criminal Appeal No.1884 of 2013) decided by the Hon'ble Apex Court on 28th August 2024,

(8) M. Cheluviah vs. Smt. Amruthamma, 2004 SCC OnLine Kar 580,

(9) Lalit Chaturvedi and others vs. State of Uttar Pradesh and another, 2024 SCC OnLine SC 171,

(10) Sanjay S/o Laxman Kholapurkar vs. State of Maharashtra and others (Criminal Application (Apl) No.221 of 2020 and other companion matters), decided on 22nd July 2024 by the Division Bench of this Court, Bench at Nagpur (to which one of the Member of this Division Bench i.e. Smt. Justice Vibha Kankanwadi, is a party).

5. Learned Advocate for the petitioner submits that the allegations in the FIR are in respect of various works done from September 2017 to March 2019, however the FIR has been lodged belatedly i.e. on 8th December 2019. In fact the petitioner was transferred to Amravati by order dated 5th October 2018. In

fact inquiry was made and report was submitted. In the report submitted by the Depot Manager, allegations are made only against one Mr. Pawar. It is stated that the present petitioner had misused the powers of his post and he resubmitted the works with escalation of the expenditure and without giving the work to the labour cooperative institution, got it completed from private contractor. He had issued false completion certificate when the work was of substandard and incomplete. It was stated that the petitioner by conspiring with other accused, misappropriated an amount of Rs.19,82,730/-. In fact the present petitioner had deposited an amount of Rs.10,00,000/- at the time of anticipatory bail before this Court and it was as per order dated 4th August 2020. The investigating officer ought to have considered the functions and duties of junior engineer and deputy engineer. The petitioner was only supervising the work. The work was actually got done by junior engineers and even the measurement book has been prepared by them. By order dated 16th November 2019 the committee was appointed to inquire into the allegations. However, actually no inquiry was held and directly the FIR has been registered. In the audit conducted every year, there were no allegations of misappropriation against the petitioner. The petitioner, in the capacity of executive

engineer, at the relevant time, was authorized only to take inspection of 10% work done as per the norms of the M.S.R.T.C. There were no signatures of the petitioner on the final bills and all the payments were made by R.T.G.S. Even the investigation conducted by the investigating officer would disclose that all work was done. Under such circumstance, it would be unjust to ask the petitioner to face the trial.

6. Per contra, the learned APP strongly objection the petition. He submits that the FIR has not been directly registered but it was after the report that was submitted by the Inquiry and Security Branch, Osmanabad. The charge-sheet has been filed and it specifically states that during the tenure of petitioner from September 2017 to August 2018, in all eight works were shown to be completed, however, those were of sub-standard quality and were incomplete. Voluminous record has been seized. Note has also been taken in the charge-sheet that in Bail Application Nos.35 of 2020 and 36 of 2020 filed in this Court, the applicants therein, that means the present petitioner and co-accused have deposited Rs.10,00,000/- each i.e. in all Rs.20,00,000/-. Therefore, every note of the subsequent events has been taken by the investigating officer. Deposit of the amount will not

absolve the petitioner from any liability and therefore, let the petitioner face the trial.

7. At the outset, we would like to say that in the three Judge Bench decision, in *Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others* (supra), it has been observed by the Hon'ble Supreme Court that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. Here, in the present case, we are not at the initial stage. Entire investigation is over. In that case itself, it is observed by the Hon'ble Apex Court that, though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. Now, as regards the present case is concerned, there is evidence in the nature of the inquiry report which was based on voluminous documents including the quality of the work done and the escalation in the price. Further, the concerned Court, at the time of framing charge, would certainly consider, out of the offences which have been quoted by police, which offences are transpiring. In respect of other citations are

concerned, we are guided, as to under which situation this Court can exercise its powers under Section 482 of the Code of Criminal Procedure. Here, we cannot say that the facts in the FIR and the material that has been collected in the charge-sheet disclose civil dispute only. When it is said that false documents have been created, then certainly it is not a civil dispute.

8. In *Sanjay S/o Laxman Kholapurkar vs. State of Maharashtra and others (Criminal Application (Apl) No.221 of 2020 and other companion matters) decided by the Division Bench of this Court, Bench at Nagpur* (supra), the facts were totally different. There the various officers who were working in the Irrigation Department (Water Resources Department) of Government of Maharashtra had faced the departmental inquiry and the applicants therein were exonerated and therefore, taking into consideration the decision in *Ashoo Surendranath Tewari vs. CBI, (2020) 9 SCC 636*, the FIR and the charge-sheet was quashed and set aside. Here, in the present petition, the petitioner has not been absolved.

9. In the recent Judgment of the Hon'ble Apex Court in *Shaileshbhan Ranchhodbhai Patel and another vs. State of Gujarat and others* (supra), it has been reiterated that even after charge-sheet under Section 173(2) of the Code of Criminal Procedure is filed,

still the High Court can exercise its powers under Section 482 of the Code of Criminal Procedure, if it comes to the conclusion that continuation of the proceedings arising out of such FIR would be an abuse of the process of law. However, we would have considered the said situation if the petitioner would have shown that material in the charge-sheet is not sufficient to attract any of the offences.

10. as aforesaid, there is material against the petitioner and therefore, we do not find this to be a fit case where we can exercise our inherent powers under Section 482 of the Code of Criminal Procedure.

11. The Writ Petition stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/SEP24.