



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.2234 OF 2021**

Nandaji S/o Tulshiram Tekade,
Age:- 69 years, Occu:- Retired,
R/o:- Chandak Layout, Chikhli Road,
Buldhana, Dist. Buldana.

..Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
City Police Station, Nandurbar,
Tq. and Dist. Nandurbar.
2. Mr. Sopan Santosh Sambare,
Age:- 36 years, Occu:- Service,
R/o:- C/o:- K. S. Devre, Pramod Nagar,
Near Nirmala Convent, Gangapur Road,
Nashik, Dist. Nashik,
Mob. No.9422946392

..Respondents

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Mr. P. D. Bachate and Mr. A. D. Khot, Advocates for the Applicant.
Mr. A. M. Phule, APP for Respondent No.1.
Mr. P. P. Kothari, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 07th OCTOBER, 2024.**

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

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.27/2020 registered with City Police Station, Nandurbar for offences punishable under Sections 420, 406, 409 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.215/2021 pending before learned Judicial Magistrate First Class, Nandurbar.

2. The respondent no.2 herein lodged report with City Police Station, Nandurbar alleging that he is serving as Regional Manager with Maharashtra State Co-operative Tribal Development Corporation Limited (for short 'Corporation'), who is responsible for implementation of the Government scheme for distribution of diesel pumps and gas stoves (braziers) for tribal agriculturists and beneficiaries. The FIR states that during the period from 2004 to 2009 enquiry in respect of misappropriation and fraud in implementation of the scheme at the hands of officers of the department and contractors was contemplated. A Public Interest Litigation No.153/2012 was filed before this Court seeking direction to cause enquiry into the allegations. Consequently, enquiry was caused by the Committee headed by Justice M. G. Gaikwad (Retired). The Committee submitted report, wherein, it is revealed that during the period from 2004-2005 to 2008-2009 the responsibility for implementation of the scheme was on officers namely Mr. Gokul Ratan Bagul, Sambhajirao Kolpe and transport contractor M/s. Akashdeep Vidyut Kamgar Sahakari Sanstha, Nandurbar. Total 11354 oil pumps were purchased and remitted for distribution to the office of Nandurbar. However, total 5982 oil pumps have been subjected to misappropriation and officers Mr. Gokul Ratan Bagul and Mr. Sambhajirao Kolpe were held responsible for misappropriation of amount of Rs.10,57,99,896/-. Similarly, transport contractor M/s. Akashdeep Society through

Mr. Arun Shivilal Kokani, Mr. Girish Udesing Pardeshi were found responsible for misappropriation worth Rs.1,52,03,348/-. As such, amount of Rs.12,10,03,244/- has been misappropriated out scheme for distribution of oil pumps.

3. The FIR further alleges that another scheme for distribution of gas units was implemented through Regional Office at Nandurbar during the period from 2006-2007 to 2008-2009 for benefit of tribal. The Regional Manager Mr. Sambhajirao Kolpe and Gokul R. Bagul were jointly responsible for implementation of scheme. Total 23477 gas units were purchased and made available for distribution. As per documents, 17889 gas units are shown to have been distributed. However, on scrutiny of record by the Committee, particulars in respect of 14630 gas units could not be located. No accounts in respect of 2900 gas units were made available. As such, total amount of Rs.77,72,000/- towards cost of gas units and amount of Rs.6,25,000/- towards transportation i.e. total 83,97,000/- has been misappropriated by then Regional Manager Mr. Sambhajirao Kolpe and President and Vice President of M/s. Akashdeep Society, Nandurbar. Consequently, total loss of Rs.12,94,00,244/- has been caused to the Government and amount has been misappropriated by the accused persons. Consequently, Crime No.27/2020 dated 22.01.2020 has been registered against Mr. Gokul R. Bagul, Sambhajirao Kolpe and President and Vice

President of M/s. Akashdeep Society. In pursuance of aforesaid crime investigation progressed.

4. On 16.06.2020, respondent no.2 communicated Investigating Officer to add applicant as accused in aforesaid crime. On 17.06.2020, the Investigating Officer called information as regards to the role of the applicant in commission of offence and finally filed charge-sheet before Judicial Magistrate First Class at Nandurbar in R.C.C. No.215/2021 against in all 8 accused persons including applicant.

5. Mr. Bachate, learned Advocate appearing for the applicant vehemently submits that applicant served as Regional Manager at Nandurbar during the period from 01.07.2009 to 02.07.2009, 17.07.2009 to 01.07.2010 and 07.07.2010 to 31.12.2010. He retired from service in the month of April 2011 on attaining age of superannuation. During the tenure of applicant as Regional Manager, he took serious steps against accused Mr. Gokul R. Bagul and Chairman of M/s. Akashdeep Society. The applicant informed Managing Director of the Corporation regarding irregularities in distribution of diesel pumps vide his communication dated 22.12.2009. Similarly, on 30.01.2010 the applicant had called upon explanation from officers and contractor as regards to the deficit of oil pumps and records. In pursuance of communication made by the applicant, the Managing Director had called explanation from

Mr. G. R. Bagul. The applicant has also reported about improper distribution of oil pumps during the period from 2008-2010 and also issued notice to Chairman of M/s. Akashdeep Society with copy to Mr. V. S. Kolekar and Mr. G. R. Bagul calling upon their explanation as regards to the serious irregularities. The applicant has also initiated enquiry against them. On 03.09.2010 the applicant informed Managing Director of Corporation as regards to the double distribution of pumps to 32 beneficiaries. The applicant himself was a witness before Enquiry Committee headed by Justice M. G. Gaikwad (Retired). There are observations in the report as regards to the action and concrete steps taken by the applicant against Mr. G. R. Bagul and Chairman of M/s. Akashdeep Society.

6. Mr. Bachate would further point out that another one man Committee, appointed for scrutinizing enquiry report, records observations as regards to the misconduct on the part of Mr. G. R. Bagul and Mr. Sambhajirao Kolpe. Consequently, FIR was directed to be lodged against them alongwith Chairman of M/s. Akashdeep Society. However, only on subsequent representation made by respondent no.2, applicant has been implicated as an accused in Crime No.27/2020.

7. Mr. Bachate would further submit that contents of the FIR and charge-sheet on its face value do not make out any offence

against the applicant. The applicant has honestly discharged his duties and infact instrumental to unearth fraud at the hands of other accused persons. Mr. Bachate would further point out that although departmental proceeding was initiated against applicant, it has been closed stating that issue is subject matter of criminal proceeding. In view of the aforesaid background, Mr. Bachate would urge to quash the FIR and consequential criminal proceeding against the applicant by invoking inherent powers of this Court.

8. Per contra, Mr. Phule, learned APP appearing for the respondent-State and Mr. Kothari, learned Advocate appearing for respondent no.2 vehemently opposed application contending that applicant was Regional Manager during the period of misappropriation and he is also responsible for loss to the Government and misappropriation of the amount, which was meant for benefit of tribal community.

9. Having considered submissions advanced and after going through the FIR and charge-sheet, it can be gathered that respondent no.2 lodged report in pursuance of authorization given to him by the Corporation as regards to the misappropriation and fraud in the implementation of the Government scheme during the period from 2004 to 2009. The FIR is mainly based on findings

recorded by Enquiry Committee appointed by the State of Maharashtra. The committee recorded findings in the report that Regional Manager Mr. Sambhajirao Kolpe and Director of M/s. Akashdeep Society have misappropriated amount of Rs.12,94,00,244/- during implementation of scheme for distribution of diesel pumps and gas units to the tribal community. The reading of the FIR would show that no role is attributed against the applicant in commission of offence. The Enquiry report, particularly in paragraph nos.4.57 and 6.5 records findings as regards to the action taken by applicant against erring officers and contractor in the matter of illegality in implementation of scheme. Even, the communication issued by the office of Corporation for registration of offence in pursuance report submitted by Justice Gaikwad Committee specifically suggests for registration of the offence against Mr. G. R. Bagul and Mr. Sambhajirao Kolpe. Apparently, applicant has been examined as witness before the Committee and he has given important input to unearth illegality and misappropriation in implementation of scheme. It is clear that, initially applicant was not cited as accused in the FIR and it is only on the basis of communication dated 16.06.2020 made by respondent no.2, applicant has been implicated as an accused.

10. It is pertinent to note here that Investigating Officer has made correspondence to Managing Director of the Corporation as

well as Regional Manager to explain role of the applicant in commission of offence. However, reply by corporation nowhere explains actual role of the applicant except statement that applicant was Regional Manager for relevant period.

11. On perusal of the charge-sheet, it can be observed that omnibus allegation is employed against applicant that he was Regional Manager at Nandurbar during implementation of the scheme and during that period he failed to discharge his duties in accordance with law or he was negligent in scrutinizing record submitted by contractor and officers before releasing bills. However, to substantiate aforesaid stipulations, there is absolutely no material in the charge-sheet. The report of the Enquiry Committee under Chairmanship of Justice M. G. Gaikwad (Retired), nowhere records adverse findings as regards to the working of the applicant. Even, one man committee, who scrutinized report is silent as regards to the role of the applicant. Further communication made by the office of the Corporation towards registration of offence nowhere stipulates accusation against application. On other hand, it can be gathered that applicant has taken several steps to check illegality in implementation of the scheme. Infact, he appears to be important witness, who has thrown light on illegality in implementation of scheme. *Prima facie*, it appears that his statement before Enquiry

Committee supported by other material is basis of finding recorded by the Committee. We find substance in contentions of Mr. Bachate that applicant has been added as accused without verification of relevant facts and material.

12. The charge-sheet depicts that entire case of prosecution is based on findings recorded by Enquiry Committee. However, report of Committee nowhere blames applicant for commission of offence. The departmental enquiry against applicant has been dropped stating that matter is subjudice before the Court in pending criminal proceeding. In this background, we find that in absence of any material to constitute ingredients of Sections 405 and 415 of the Indian Penal Code, it would be unjust to permit criminal prosecution against applicant, who has been retired from service in the year 2011. Pertinently, name of the applicant is incorporated in the charge-sheet even without recording supplementary statement of the informant or collection of pin point material to bring home guilt against him. We find that contents of charge sheet are bereft to bring home complicity of applicant in commission of offence. Consequently, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed.

b. The FIR in Crime No.27/2020 registered with City Police Station, Nandurbar for offences punishable under Sections 420, 406, 409 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.215/2021 pending before learned Judicial Magistrate First Class, Nandurbar, is hereby quashed and set aside to the extent of applicant.

c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE