



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

CRIMINAL APPLICATION NO.2772 OF 2019

Shashikant S/o Dasrao Phatak,
Age: 46 years, Occu: Business,
R/o. Kalamb, Tq. Kalamb,
Dist. Osmanabad.

..Applicant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Kalamb,
Tq. Kalamb, Dist. Osmanabad.
2. Ashok Dharmraj Nandalgaonkar,
Age: Major, Occu: Retired Tahsildar,
R/o. Shahu Nagar, Pangri Road,
Beed 431122.

..Respondents

...

Mr. V. D. Salunke h/f Mr. M. V. Salunke, Advocate for the
Applicant.

Mr. G. A. Kulkarni, APP for Respondent-State.
Respondent No.2 is served.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

Reserved on : **27th SEPTEMBER, 2024.**
Pronounced On : **25th OCTOBER, 2024.**

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

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code seeking quashment of FIR in Crime No.171/2017 dated 06.07.2017 registered with Kalamb Police Station, Dist. Osmanabad for offences punishable under Sections 3, 403, 409, 420, 468, 470, 471 r/w 34 of the Indian Penal Code and consequential criminal proceeding in RCC No.167/2017 pending before Judicial Magistrate First Class, Kalamb.

2. The respondent no.2 lodged report dated 06.07.2017 alleging that since 16.09.2016 he is discharging his duties as Tahsildar at Kalamb. The accused Abhijeet Bhimrao Kharate is discharging duties as Warehouse Manager in warehouses at Kalamb and Yermala since 24.07.2015. At present he has been suspended. The Committee established by Collector Office inspected the record of warehouses at Kalamb and Yermala and reported that accused Abhijeet Kharate has indulged in black marketing of food grains and misappropriated wheat weighing 2932.48 quintals, rice weighing 1859.41 quintals and sugar weighing 86057 quintals. It is consequently alleged that accused Abhijeet Kharate while discharging his duties as public servant at Government warehouses made false entries in the Government record, misused his position as public servant and duped Government for an amount of Rs.1,32,96,051/-. As such, he has committed offence under Section 3 of the Essential Commodities Act and Sections 403, 409, 420, 467, 470, 471 and 34 of the Indian Penal Code. The investigation progressed in pursuance of aforesaid crime and charge-sheet was filed against in all 7 accused persons. Thereafter, supplementary charge-sheet is filed wherein name of applicant figured as accused no.8.

3. Mr. Salunke, learned Advocate appearing for the applicant submits that applicant is respectable person and he has been falsely implicated in aforesaid crime. The applicant runs business of cloth, petrol pump and adat shop since 1994. He owns agriculture land. He is also elected as Director of APMC Kalamb. He would submit that accused no.1-Abhijeet Kharate is prime accused. The name of the applicant was not reflected in the FIR, which was based on alleged enquiry report by the Inspection Squad appointed through Collector Office. The name of the applicant was

never in picture. No suspicion was raised against him in the enquiry and investigation. Even when earlier charge-sheet was filed, applicant was not shown as accused. However, for the political reasons, his name has been implicated in supplementary charge-sheet. He would submit that applicant was in the business of adat shop and deals with agriculture products brought by the farmers. He cannot refuse to receive goods put to his adat shop by any farmer. However, on the basis of assumption and presumption, applicant is roped in the crime. Consequently, his name is figured in the supplementary charge-sheet. The applicant was never called for enquiry by police nor he was given opportunity to clarify so called evidence against him.

4. Mr. Salunke would take us through contents of the charge-sheet and submits that there is absolutely no material to link the applicant with the commission of offence. He is sought to be roped in the crime on the basis of alleged diary recovered through the house search of accused no.1, wherein transactions worth Rs.20,31,850/- are noted and allegations is employed that goods received from Government warehouses were transported to adat shop of applicant. Mr. Salunke would further submit that applicant has been falsely shown as absconding till the date of his arrest on 21.06.2018, although he was very much available and was busy in conduct of his day to day business.

5. Per contra, Mr. Kulkarni, learned APP appearing for respondent-State vehemently submits that applicant was absconding since his name was revealed as accused. The applicant facilitated sale of goods received from accused no.1 in the black market. Large chunk of goods misappropriated by accused no.1- Abhijeet Kharate was transported to adat shop of applicant and it

was sold in the black market. He would submit that there is sufficient material in the charge-sheet that would depict involvement of applicant in commission of offence in connivance with accused no.1. Although name of the applicant is not appearing in the FIR, during the course of investigation name of the applicant is surfaced. Accordingly, charge-sheet was filed against him after his arrest was secured. He would submit that there is no merit in the contentions of the applicant.

6. We have considered submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have gone through the contents of FIR and charge-sheet. Apparently, name of the applicant is not shown as accused in the FIR. The FIR was lodged by Tahsildar, Kalamb on the basis of enquiry report as against accused no.1, who was in-charge of Government warehouses and found to have misappropriated food grains worth Rs.1,32,96,051/-. However, during the course of further investigation as regards to the disposal of food grains in the black market, the role of the other accused persons appears to have been surfaced. The statement of witnesses have been recorded under Section 161 of the Criminal Procedure Code. One Dasharath @ Dasu Babu Lohar in his statement dated 17.07.2017 gives detailed version regarding *modus operandi* of accused for black marketing of goods. He states that he was working as Hamal at Government warehouse, Kalamb and he was responsible to load vehicle. In his statement he discloses that misappropriated quantity of goods was transported through vehicle owned by applicant and thereafter ported at his shop. Thereafter, shop owner used to pay the amount to accused no.1. Similarly, in statement of Mr. Samrut Narayan Sukate, who was Record Keeper with accused no.1, he clearly states that misappropriated food grains from Government

warehouses were transported to traders at Barshi and specifically names applicant who used to deal with black marketed goods. There is some documentary evidence that would depict involvement of the applicant in commission of offence.

7. Although this Court possesses inherent powers under Section 482 of the Criminal Procedure Code to quash the FIR and criminal proceeding, such power can be sparingly used in appropriate cases in light of parameters of jurisdiction laid down by Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹. It is well settled that falsity of allegations or in depth scrutiny of the material in the charge-sheet or appreciation of evidence is not permissible while exercising inherent powers. When, *prima facie*, there is material in charge-sheet depicting complicity of applicant in the alleged offence, this Court would be slow in exercising inherent powers and grant relief prayed. Consequently, there is no merit in the application. Hence, Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/October-2024

¹ AIR 1992 SC 604.