



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO.221 OF 2020

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 61 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Officer Behind Water Tank,
Khamla, Nagpur.

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Superintendent of Police,
Anti Corruption of Bureau, Nagpur.
- 2) State of Maharashtra,
Through Police Station Officer,
Sadar Police Station, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.220 OF 2020**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 61 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Behind Water Tank, Khamla,
Nagpur.

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Superintendent of Police,
Anti Corruption of Bureau, Nagpur

- 2) State of Maharashtra,
Through Police Station Officer,
Sadar Police Station, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.222 OF 2020**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 61 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Behind Water Tank, Khamla,
Nagpur.

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Superintendent of Police,
Anti Corruption of Bureau, Nagpur
- 2) State of Maharashtra,
Through Police Station Officer,
Sadar Police Station, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.925 OF 2018**

- 1) Devendra s/o. Parshuram Shirke, Aged
About 68 Years, Occupation : Retire,
r/o. Plot no. 50, Ishavayam Purnavad
Nagar, Behind Prasad Mangal
Karyalaya, Akashwani Gangapur Road,
Nashik-13

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,

Through Police Station Officer,
Police Station, Sadar, Nagpur.

- 2) Anti Corruption of Bureau,
Through its Police Inspector, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.926 OF 2018**

- 1) Devendra s/o. Parshuram Shirke, Aged
About 68 Years, Occupation : Retired,
r/o. Plot no. 50, Ishavayam Purnavad
Nagar, Behind Prasad Mangal
Karyalaya, Akashwani Gangapur Road,
Nashik-13

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Deputy Superintendent of
Police, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.928 OF 2018**

- 1) Devendra s/o. Parshuram Shirke, Aged
About 68 Years, Occupation : Retired,
r/o. Plot no. 50, Ishavayam Purnavad
Nagar, Behind Prasad Mangal
Karyalaya, Akashwani Gangapur Road,
Nashik-13

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Deputy Superintendent of
Police, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.929 OF 2018**

- 1) Devendra s/o. Parshuram Shirke, Aged
About 68 Years, Occupation : Retired,
r/o. Plot no. 50, Ishavayam Purnavad
Nagar, Behind Prasad Mangal
Karyalaya, Akashwani Gangapur Road,
Nashik-13

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Police Inspector, Nagpur.

.... Non-applicant(s)

Mr. S.D. Dewani, Advocate for the applicants and Ms Kalyani Marpakwar, APP for the non-applicant Nos.1 and 2/State in APL Nos.221, 220 and 222/2020

Mr. Anil Mardikar, Senior Advocate, a/b Mr. R.R. Vyas, Advocate for the applicants and Mr. Anand Jaiswal, Senior Advocate a/b Ms Kalyani Marpakwar, APP for the non-applicant Nos.1 and 2/State in APL Nos.925, 926, 928 and 929/2018

**WITH
CRIMINAL APPLICATION (APL) NO.975 OF 2018**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 58 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Khamla, Nagpur.
- 2) Sopan s/o. Ramrao Suryavanshi,
Aged About 65 Years, Occupation :
Retired, R/O. Manas, Plot No. 21,
Sahkar Nagar, New Usman Pura,
Aurangabad

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Police Inspector, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.973 OF 2018**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 58 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Khamla, Nagpur.
- 2) Sopan s/o. Ramrao Suryavanshi,
Aged About 65 Years, Occupation :
Retired, R/O. Manas, Plot No. 21,
Sahkar Nagar, New Usman Pura,
Aurangabad

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Deputy Superintendent of
Police, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.974 OF 2018**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 58 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Khamla, Nagpur.
- 2) Sopan s/o. Ramrao Suryavanshi,
Aged About 65 Years, Occupation :
Retired, R/O. Manas, Plot No. 21,
Sahkar Nagar, New Usman Pura,
Aurangabad

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Deputy Superintendent of
Police, Nagpur.

.... Non-applicant(s)

**WITH
CRIMINAL APPLICATION (APL) NO.976 OF 2018**

- 1) Sanjay S/o. Laxman Kholapurkar
Aged about 58 years,
Occupation: Retired, R/o. 77-B, Pande
layout, Khamla, Nagpur.
- 2) Sopan s/o. Ramrao Suryavanshi,
Aged About 65 Years, Occupation :
Retired, R/O. Manas, Plot No. 21,
Sahkar Nagar, New Usman Pura,
Aurangabad
- 3) Mr. Lalit s/o. Pralhadrao Ingale,
Aged About 58 Years, Occupation :
Service, R/O. 13, Gopal Colony,
Borkute Layout, Narendra Nagar,
Nagpur - 440 015

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
- 2) Anti Corruption of Bureau,
Through its Police Inspector, Nagpur.

.... Non-applicant(s)

Mr. R.R. Vyas, Advocate for the applicants and Mr. Anand Jaiswal, Senior
Advocate a/b Ms Kalyani Marpakwar, APP for the non-applicant Nos.1 and
2/State in APL Nos.975, 973, 974 and 976/2018

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**

**CRIMINAL APPLICATION (APL) NOS.221/2020, 220/2020,
222/2020, 925/2018, 926/2018, 928/2018 AND 929/2018**

**RESERVED ON : 09.07.2024
PRONOUNCED ON : 22.07.2024**

**CRIMINAL APPLICATION (APL) NOS.975/2018, 973/2018,
974/2018 AND 976/2018**

RESERVED ON : 19.07.2024.

PRONOUNCED ON : 22.07.2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. Anil Mardikar, learned Senior Advocate, assisted by Mr. R.R. Vyas, learned Advocate, Mr. Shyam Dewani, learned Advocate for the applicants, Mr. Anand Jaiswal, learned Senior Advocate, assisted by Ms Kalyani Marpakwar, learned APP for the State.

2. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned Senior Advocates, learned Advocates and learned APP for the respective parties.

3. All these applications are filed under Section 482 of CrPC for quashing the FIRs against the applicants for the offences punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

4. It is not in dispute that all the applicants joined the Irrigation Department (Water Resources Department) Government of Maharashtra.

5. The Applicant Sanjay s/o Laxman Kholapurkar was working as 'Superintending Engineer'. At the time of the FIR, he was posted as Administrator of Command Area Development Authority, Nagpur and then, his services were taken for Gosikhurd Project. Due to ill-health, he was compelled to take voluntary retirement in 2013. The another applicant-Devendra s/o Parshuram Shirke retired from the post of 'Managing Director' of Maharashtra Water Conservation Corporation, Aurangabad in 2013. The applicant-Sopal s/o Ramrao Suryavansi stood retired from the post of Chief Engineer Gosikhurd Project, Nagpur. The applicant-Lalit s/o. Pralhadrao Ingale was working on the post of Executive Engineer, Gosikhurd Canal Division No.III, Nagbhid at the relevant time.

6. It appears that on the directions given by the Government, Milind Totre, Deputy Superintendent of Police, Anti Corruption

Bureau, Nagpur had conducted an open inquiry in the irregularities committed by various officials of the Irrigation Department in executing the Gosikhurd Project on the river Wainganga. Upon the same open inquiry, the offence came to be registered against many officials from the Irrigation Department, including the applicants.

7. In the complaint/FIR, a conclusion was reached that tenders were floated by increasing price and it has not been done under the established procedure. It was also stated that irregular items were added during updation of the estimated tender, increasing the tender cost thereby cause loss to the State Exchequer. It appears that open inquiry was in respect of the entire project but different FIRs have been filed, involving different accused persons on the basis of the tenders those were floated.

8. The learned Senior Advocate and the learned Advocate for the respective applicants vehemently submitted that the Department had initiated Departmental Inquiry against the applicants and the other Officers, who were named in the FIR. The Charge No.1 was in respect of the irregular items added during

updatation of estimated tender, resulting in increasing the tender cost and it was resulted in to the open inquiry. The applicants in all applications have been exonerated from the said Charge No.1. Insofar as the other alleged irregularities in respect of the charge Nos.2, 3, 4 and 6, the punishment has been awarded. It has been to the extent of amount, which has been already recovered and when appeal was filed by the applicants-Sanjay and Sopan, the Principal Secretary of the Water Resources Department, Government of Maharashtra, the said amount of 12 % per month for 3 years was reduced to 6 %. In further proceedings which were taken up to challenge that order, before the Hon'ble Governor, it was further reduced to 3 % for two years. They submitted that the Charge No.1 was similar to the contents of the FIR. The standard of proof in Departmental Inquiry proceedings would be on the basis of preponderance of probability, which is the much lower standard of proof and evidence. That is the requirement in the criminal proceedings, where the case has to be proved beyond reasonable doubt. When from Charge No.1 the applicants have

already been exonerated, it would be futile exercise to ask the applicants to face the trial.

9. The learned Senior Advocate for the applicants relies on the decision in *Ashoo Surendranath Tewari vs. CBI*, reported in (2020) 9 SCC 636, wherein it is observed that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding, where the case has to be proved beyond reasonable doubt. In that case, the appellant was exonerated and therefore, on the basis of the catena of judgments, taking into consideration the requirement of law, it was observed that the chances of conviction in a criminal trial, in such circumstance, involving the same facts appear to be bleak and therefore, the appellant was then discharged.

10. The learned Senior Advocate also relies on the decision of the Division Bench of this Court in Criminal Application (APL) No.734 of 2020 (*Keshav s/o. Chandrakant Tayade Vs. The State of Maharashtra and another*) decided on 20.06.2022. That applicant

was also the similarly situated Officer of the same Department, had approached to this Court under section 482 of the CrPC. He was also exonerated from the Charge No.1 and therefore, this Court had quashed and set aside the FIR. He also relies on the judgment of the Hon'ble Single Bench of this Court, when the applicant-Sanjay had filed Criminal Revision Application No.141 of 2019 in respect of another matter i.e. based on another FIR, wherein the charge-sheet was filed in Special Case No.24 of 2018. The Hon'ble Single Judge by Judgment dated 16.09.2021 discharged the applicant-Sanjay. Similarly, the other Officers, namely Dilip s/o Deorao Pohekar, Devendra s/o Parshuram Shirke and the applicant-Sanjay have been discharged. In respect of the other FIRs and the cases, in all these matters a reliance has been placed on ***Ashoo Surendranath Tewari*** (supra).

11. Mr. Anand Jaiswal, learned Senior Advocate assisted by Ms Kalyani Marpakwar, APP for the State strongly opposes the applications. Though the applicants are exonerated from the Charge No.1, their punishments in respect of other charges have

been upheld up to the Hon'ble Governor. Reply on behalf of the non-applicant No.1 has been relied, wherein the contents of the FIR are reiterated.

12. The first and the foremost fact to be noted is that it is not in dispute that the FIR in other matters, in which the present applicants are involved, are also based on the open inquiry, which was conducted by the ACB. There appears to be single Departmental Inquiry and it was not in piecemeal or in respect of the some different items. Now it is stated that the reason, for filling different FIRs, is the different tenders, those were issued for particular strip and maybe on different occasions. But when the Departmental Inquiry that was conducted was single Departmental Inquiry for all the allegations and the result is that the applicants have been exonerated from the Charge No.1, then the decisions in other matters, wherein the present applicants were accused, are required to be considered in favour of the applicants. There cannot be a second opinion as regards the standard of proof to prove a criminal charge is beyond reasonable doubt.

13. In the present case, we find that the allegations made in the criminal complaint are similar and identical to the allegations made against the applicants in the Departmental Inquiry. If the foundation for Charge No.1 itself was held to be not proved, in a proceedings which requires some less standard of proof, then it is hard to believe that it would achieve the standard of proof required to prove the criminal offence.

14. Another fact to be noted is that the Informant/Complainant, who had held the open inquiry was not an expert in the said field. In the complaint/FIR, he says that he had sought guidance on technical issues from the Three Member Expert Committee appointed by the Government. The said Committee appears to be different than the Committee that was appointed to conduct the Departmental Inquiry or to assist the Government in the proceedings of Departmental Inquiry. What has been held in the Departmental Inquiry is the administrative lapses and every administrative lapses cannot give rise to a criminal action. This point was considered by the Hon'ble Single Bench of this Court

before whom the revisions were filed. The non-applicants have not now clarified that whether the State has challenged the judgments in the revisions or even whether the judgment of Division Bench of this Court in *Keshav s/o. Chandrakant Tayade's* matter (supra) is challenged before the Apex Court. In the said circumstance, the present applicants also deserve a similar treatment and it would be futile exercise to ask the applicants to face the trial and therefore, the applications deserve to be allowed.

15. In view of the applications are allowed, the FIR bearing C.R. Nos.82 of 2020, 78 of 2020 and 83 of 2020 registered with Police Station Sadar, against the applicant-Sanjay s/o Laxman Kholapurkar for the offences punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are quashed and set aside.

16. The FIR bearing C.R. Nos.328 of 2018, 326 of 2018, 325 of 2018 and 327 of 2018 registered with Police Station Sadar, against the applicant-Devendra s/o. Parshuram Shirke for the offences

punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are quashed and set aside.

17. The FIR bearing C.R. Nos.327 of 2018, 328 of 2018 and 325 of 2018, registered with Police Station Sadar, against the applicants-Sanjay s/o Laxman Kholapurkar and Sopan s/o Ramrao Suryavanshi, for the offences punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are quashed and set aside.

18. The FIR bearing C.R. No.326 of 2018, registered with Police Station Sadar, against the applicants-Sanjay s/o Laxman Kholapurkar, Sopan s/o Ramrao Suryavanshi and Lalit s/o Pralhadrao Ingale, for the offences punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, is quashed and set aside.

19. It is made clear that the investigation against the remaining accused, if any, is pending, then it may proceed in accordance with law.

20. Rule is made absolute in the above terms. No order as to costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]