



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 190 OF 2024

Dr. Dhananjay s/o Keshavrao Patil
Age 56 years, Occ. Service, working
as Medical Officer-1,
R/o. Samarth Nagar, Ward No.2,
Dharashiv, Tq. And Dist. Dharashiv ...Applicant

Versus

1. The State of Maharashtra
Through Anandnagar Police
station, Dist. Osmanabad
2. Gorakh s/o Vishwanathrao Rankhamb
Age 58 years, Occ. Service as clerk
R/o. Office of Municipal Council
Osmanabad,
Tq. And district Osmanabad ...Respondents

.....
Mr. M.B. Kolpe, Advocate for the applicant
Mr. V.K. Kotecha, A.P.P. for the respondent No.1
Mr. V.B. Deshmukh, Advocate for respondent No.2.
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**
DATED : 17th JULY, 2025

O R D E R (PER SANJAY A. DESHMUKH, J.) :-

1. Heard learned advocates for the respective parties.
2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") for quashing the

First Information Report (for short F.I.R.) No. 353 of 2023, dated 15.9.2023 registered with Anandnagar police station, Osmanabad, district Osmanabad for the offence punishable under Section 53(7) of the Maharashtra Regional Town Planning Act, 1966 (for short "M.R.T.P. Act") and the consequential charge sheet No. 129 of 2023 arising out of the said F.I.R.

3. The informant averred in the report that he is a clerk in the office of the Municipal Council, Osmanabad (now known as Dharashiv) in sanitary department. He received an application from one Balasaheb Subhedar about illegal construction made by the applicant in the property bearing No. 306 in ward No.31 situated at Samarth Nagar, Waruda Road, Osmanabad. The construction of the house was going as per the permission granted on 4.10.2014 by the Municipal Council. The informant got the information that the construction made by the applicant is inconsistent with the valid permission of construction granted regarding survey No. 233, city survey No. 7165/6. Therefore, he issued notice no. 2545/2023 dated 03/08/2023 to remove the illegal constructions within a month. The applicant replied to that notice on 22/08/2023. The informant was not satisfied with the reply given by the applicant and his explanation was not accepted as per letter of the said department dated 08/09/2023. Therefore, for raising such illegal construction as per the section

53(7) of M.R.T.P. Act the report was lodged against the applicant.

4. Learned advocate for the applicant submitted that informant has no power to register prosecution against the applicant, as it appears that there is no delegation of power from the Chief Officer of the Municipal council in favour of the informant. Prima facie, no case is made out against the applicant as from the description of the property, as has been given in the report, it is alleged that the unauthorized construction is on property No. 306 in survey No. 233 bearing CTS No. 7165/6, whereas the applicant is owner of House No. 26/1205. It is an admitted fact that no visit, inquiry or inspection conducted by the officers of the Municipal Council on the basis of the application made by the complainant Mr. Subhedar and a false case is filed against the applicant only with a view to harass him. Learned advocate submitted that the prosecution initiated against the applicant is totally contrary to the settled principle of law as there is no independent material to demonstrate that the present applicant has unauthorizedly raised construction contrary to the sanctioned plan. The Municipal Council has issued the completion certificate on 09.04.2008, therefore, before registering the report, the authorities of the Municipal Council ought to have made enquiry or inspection in that respect. Thus, filing of the report against the applicant is nothing but abuse of the process of law. He lastly prayed to quash and set

aside the report.

5. Learned A.P.P. for the State and learned advocate for respondent No.2 have submitted that, there is an illegal construction made by the present applicant on the said land as per the information received by the informant. Despite of issuance of a due notice to the present applicant to remove the unauthorized construction, the applicant has failed to either remove the construction in the given time period or to give an acceptable reply to the said notice. Moreover, the informant has acted on an official order by the chief officer of the municipal council of Osmanabad (Dharashiv) to register a criminal offence against the said applicant. They lastly prayed to reject the application.

6. We have perused the charge sheet and the statements of witnesses as well as the notice issued by the informant to the applicant and the reply given by the applicant to the informant. The alleged sanctioned map is not filed with the charge sheet. Specific area of illegal construction has also not been mentioned in the notice. The permission for raising constructions was already given to the applicant. No measurement was carried out by specifying the illegal construction as per the notice given under Section 53 of the M.R.T.P. Act by the informant. In such circumstances and on such scanty

material, if the applicant is directed to face the trial, it would certainly be an abuse of the process of the Court. The case is made out for exercise of powers under section 482 of the Cr.P.C. We are therefore, inclined to allow the application, in the interest of justice to prevent the abuse of process of the Court. Hence, the following order:-

O R D E R

- I. The application stands allowed.
- II. The F.I.R. No. 353 of 2023, dated 15.9.2023 registered with Anandnagar police station, Osmanabad, district Osmanabad for the offence punishable under Section 53(7) of the Maharashtra Regional Town Planning Act, 1966 and the consequential charge sheet No. 129 of 2023 arising out of the aforesaid F.I.R. stand quashed and set aside as against the present applicant.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

rlj/