



-1-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 288 OF 2024

Abdul Wakil s/o Abdul Bari,
Age 62 years, Occ. Business,
R/o. Madani Chowk, Baijipura
Aurangabad

...Applicant

versus

1. The State of Maharashtra
Through Police Inspector,
Phulambri police station
Tq. Phulambri, District Aurangabad

2. Shekhar s/o Govindrao Shinde
Age 48 years, Occ. Govt. servant
R/o. Sara Vaibhav, Harsul
Aurangabad

...Respondents

.....
Mr. Shaikh Kayyum Najir, Advocate for the applicant
Mr. V.K. Kotecha, A.P.P. for the respondents
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATED : 1st APRIL, 2025

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

1. The applicant is seeking quashment of the First Information Report (for short "F.I.R.") vide Crime No. 71 of 2022, dated 15.3.2022 registered with Phulambri police station, District Aurangabad for the offences punishable under Sections 379, 109, 120-B, 447 of Indian Penal Code, 1860 (for short "I.P.C." and under sections 21(1), (2), (3), (4), (5), (6) of the Mines Act, 1952 and the consequential

criminal case bearing R.C.C. No. 269 of 2022, pending before the learned Judicial Magistrate, First Class, Phulambri, District Aurangabad.

2. The informant -respondent No.2 averred in the report that the Revenue Circle Officer of Warud Kazi, Tq. and district Aurangabad lodged a report against the applicant and other accused persons, alleging that they have excavated and stolen the soft stone/Murram illegally without having licence/ authority/ permission from concerned authority of Gairan land having block Nos. 42 and 62, situated at village Sawangi, Tah. And District Aurangabad, owned and possessed by the State Government.

3. The informant further averred that those two blocks are having plenty of stones. The applicant and other 10 accused persons extracted those stones and Murram without making payment of royalty to the State Government. Thus, they have committed theft of stones and Murum. They illegally by committing criminal trespass, entered in those two block numbers, which are the properties owned by the State Government. They used the JCBs, Poclains, Hiwa machines and tractors and extracted stones and Murram from the said land since 2015 and sold it illegally.

4. Learned advocate for the applicant submitted that the applicant is falsely implicated in the crime. He is 62 years old man, having no criminal antecedents. The report is lodged as per the directions of Tahsildar for completion of target of revenue collection. There is no evidence against the applicant that he committed alleged theft. If the applicant is compelled to face the trial, it would certainly be an abuse of process of the court. He prayed to quash the report and the criminal case lodged and filed against the applicant.

5. The learned A.P.P. for the respondents strongly opposed the application and submitted that the applicant and other accused committed theft of stone and Murram from block Nos. 42 and 62 situated at Sawangi, illegally without taking permission from competent authority as provided in the Mines Act, 1952. The applicant and other accused acted against the nature and excavated the stones and Murram and stolen it from block Nos. 42 and 62. Therefore, the Tahsildar gave directions to the informant to lodge the report against the applicant and others. He submitted that there is ample evidence against the applicant. The applicant has committed crime of a serious nature. Therefore, the application is liable to be rejected.

6. A reference can be made to the judgment of Hon'ble

Supreme Court in the case of **State of Haryana and Ors. vs. Bhajanlal and Ors: AIR 1992 SC 604**. Paragraph No.102 of the said judgment reads as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

7. The aforesaid case of ***State of Haryana and Ors. vs. Bhajanlal and Ors (supra)*** has been recently relied upon by the Hon'ble Supreme Court in the case of ***Kim Wansoo Vs. State of Uttar Pradesh & Ors.***, reported in **2025 SCC Online SC 17.**

8. We have perused the report and the charge sheet, particularly the statements of witnesses. During the course of arguments, learned A.P.P. pointed out the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. He pointed out that Rule 3 states that stone and Murram are covered under the said Rules alongwith its price/rate card per brass Rs.400/-. There is no certainty as to how much/ quantity of stone and Murram has been stolen away. On the contrary, in the letter dated 1.4.2022, addressed to the learned A.P.P. it is stated that how much stone and Murram were dug out and stolen is not stated in the panchanama dated 14.03.2022. No independent witness is stating that he saw the applicant and other accused while digging and carrying out the stones and Murram from those properties. There are vague allegations that since 2015 till filing of the report, theft of stones and Murram was committed. In the statement of Sandip Pundlik Ghuge, Talathi Saja Tuljapur and Punjaram Atmaram Birhare, Talathi of Saja Sawangi, it is stated that they never noticed the applicant while

committing theft of Stone and Murram. No notice was issued to the applicant by them. The value i.e. amount of stolen stone and Murram is also not stated in the report or in the statements of witnesses.

9. Considering all the above aspects, that there is not even *prima facie* evidence to establish the alleged theft of stones and Murram on the part of the applicant, Therefore, considering the law laid down in the case of ***State of Haryana vs Bhajanlal (supra)*** and also considering the vague and baseless allegations, if the applicant is compelled to face the trial, it would certainly be an abuse of process of the court. Therefore, in the interest of justice and to prevent the abuse of process of the Court, we are inclined to exercise our powers under Section 482 of the Cr.P.C. for quashing of the report and the consequential criminal case. We, therefore, pass the following order:-

ORDER

- I. The application stands allowed.
- II. The F.I.R. vide Crime No. 71 of 2022 dated 15.3.2022 registered with Phulambri police station, District Aurangabad for the offences punishable under Sections 379, 109, 120-B, 447 of I.P.C. and under sections 21(1),

(2), (3), (4), (5), (6) of the Mines Act, 1952 and the consequential criminal case bearing R.C.C. No. 269 of 2022 pending before the learned Judicial Magistrate, First Class, Phulambri, District Aurangabad, stand quashed to the extent of this applicant.

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

rlj/