



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.239 OF 2020

- 1 Mr. Khaja Aminuddin,
Age 63 yrs., Occ. Managing Partner,
Mascot Construction Company
having its office at
H. No.1-27-45, New Road,
Manzoorpura, Aurangabad.
- 2 Mr. Khaja Moinuddin Shaikh Mehboobuddin,
Age 64 yrs., Occ. Non working Partner,
Mascot Construction Company,
R/o Plot No.145, Arif Colony, Asif Baug,
Aurangabad.
- 3 Mr. Khaja Kalimoddin Shaikh Mehboob,
Age 59 yrs., Occ. Non working Partner
Mascot Construction Company,
R/o Plot No.154, Arif Colony, Asif Baug,
Aurangabad.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station In-charge
Police Station, Paithan,
Dist. Aurangabad (Rural).
- 2 Bramhadev Vasudev Gavde,
Deputy Superintendent,
Anti Corruption Division,
Aurangabad.

... Respondents

...

Mr. A.A. Yadkikar, Advocate for applicants

Mr. A.D. Wange, APP for respondent No.1

...

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

RESERVED ON : 06th FEBRUARY, 2025

PRONOUNCED ON : 06th MARCH, 2025.

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

1 Present application has been filed for quashment of First Information Report vide Crime No.399/2019 dated 22.11.2019 registered with Police Station, Paithan, Dist. Aurangabad, for the offence punishable under Sections 13(1), (2) and 12 of the Prevention of Corruption Act, 1988 and under Section 120-B of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.A. Yadkikar for applicants and learned APP Mr. A.D. Wange for respondent No.1.

3 After taking us through contents of First Information Report, learned Advocate appearing for applicants submits that they are accused No.13. They are the partners i.e. applicant No.1 is the Managing Partner and applicant Nos.2 and 3 are non working/dormant partners in Partnership Firm 'Mascot Construction Company, Aurangabad'. Their Firm is a registered Civil

Works Execution Contractor. The Firm participates in different tenders floated by Government Authorities for various civil work. An offence came to be lodged vide Crime No.399/2019 with Police Station, Paithan stating that accused Nos.9 to 13, who are the construction company or firms, had conspired with original accused Nos.1 to 8, who are the public servants in completion of concrete road under Paithan-Apegaon Vikas Pradhikaran. There is huge amount of corruption, which was then revealed when complaint was made and District Collector had appointed a technical squad for audit of work done by accused Nos.9 to 13. The road was constructed and construction activity was given in tender to the company i.e. accused Nos.9 to 13 for different patches/portions. It is stated that for personal benefit to gain financially the road has been constructed with sub-standard material, which had developed cracks, rendering the road unusable and resulted in loss of near about 1.5 crores. Learned Advocate for applicants submits that at no point of time in the inquiry applicants – company was ever involved. Even if we take the report as it is, it may lead to breach of contract, if the quality of work is of sub-standard quality. But, certainly, there is no evidence regarding offering bribe. Even after so many years the investigation has not progressed and applicants are prejudiced because they cannot move freely, they cannot go abroad either for work or for enjoyment. When there is absolutely no evidence collected, it would be futile exercise to ask applicants

to face the trial or proceedings, which is at a very initial stage, even after six years. He relies on the decision in **Karnataka Emta Coal Mines Limited and others vs. Central Bureau of Investigation** [AIR 2024 SC 5081], wherein also after taking into consideration facts of case which are of almost similar nature that at the most civil dispute is the remedy but it cannot be given a colour of criminal offence.

4 When the statement was made that investigation has not progressed, we had asked learned APP to get the present status. Our order dated 29.01.2025 is very clear in that respect. We had asked learned APP to make a statement, upon taking instructions from the officer with whom the proposal for verification is pending, as to when the verification would be completed by him. A report has been submitted giving details as to what alleged investigation has been made. He had stated that whatever evidence has been collected has been submitted for scrutiny to his superior. He only reiterates that there is loss to the extent of Rs.1.5 Crores to State Exchequer.

5 Here, it is to be noted that accused Nos.1 to 8 are Government servants from Public Works Department. Tender was floated in 2013 regarding construction of work, which was then divided in five portions. It was found, after the work was done that the road has developed cracks, then

a complaint was received at the Anti Corruption Bureau and, therefore, an open inquiry was held in 2015. District Collector had also appointed a committee and quality of road was got assessed through various institutions. Those companies/institutions have given their reports stating that cracks have been developed due to use of sub-standard material. Now, even if we take reports submitted by those institutions as it is, it can be considered that construction has been made with sub-standard material. That cannot be *per se* corruption. The report submitted by Investigating Officer is totally silent that even after the period of almost six plus years, he could not reveal as to how any amount has been paid as bribe by any of the institutions, who had taken the contract. Out of that how much was paid to accused Nos.1 to 8. There was no answer from State side, as to why the State has not provided for the civil remedy if the Government is of the opinion that there is breach of terms of contract and instead of giving quality road, a road that has been given having sub-standard material. Construction of road in sub-standard material will not amount to corruption. The corruption can be either in cash or kind. Here, there is absolutely no such evidence. Further, from the report it can be seen that out of those 08 accused persons, accused Nos.1 to 3 stood retired from their post. The fact is not given, as to whether any Departmental Enquiry was initiated against them and what was its result. Therefore, the facts of case basically show at the most the relief under the

Civil Law would have been maintainable. There is no substance and support to allegations of using non corrupt practice amounting to an offence under the Prevention of Corruption Act as against applicants.

6 Another fact to be noted is that the company has been made as accused No.13 and not the individual. A juristic person cannot have mind to corrupt anybody in the form of giving bribe. A company is always run through human beings. The Investigating Officer has not reported that whether he had seen accounts of company, where present applicants are Directors. It would have given an indication, as to how amount of bribe has been paid. Therefore, with this kind of material, it would be futile to ask applicants to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) First Information Report vide Crime No.399/2019 dated 22.11.2019 registered with Police Station, Paithan, Dist. Aurangabad, for the offence punishable under Sections 13(1), (2) and 12 of the Prevention of Corruption Act, 1988 and under Section 120-B of the Indian Penal Code, 1860, stands quashed and set aside as against applicants.

(SANJAY A. DESHMUKH, J.)
agd

(SMT. VIBHA KANKANWADI, J.)