



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

CRIMINAL APPLICATION NO.1349 OF 2019

1. Bapusaheb Shivajirao Patil
Age: 47 years, Occu.: Government
Service as Agriculture Supervisor
In the Office of the Taluka Agriculture
Officer, Deoni, Taluka: Deoni,
District: Latur, R/o: Village Gurdhal,
Post: Shirol (J), Taluka: Udgir,
District: Latur
2. Nagendra s/o Bhujangrao Rathod,
Age: 44 years, Occu.: Government
Service as Agriculture Supervisor
In the Office of the Taluka Agriculture
Officer, Kalamnoori, Taluka: Kalamnuri,
District: Hingoli, R/o: Village Hangarga,
Post: Tondar, Taluka: Udgir,
District: Latur
3. Sachin s/o Gangadharrao Bodamwad,
Age: 36 years, Occu.: Government
Service as Agriculture Supervisor
In the Office of the Taluka Agriculture
Officer, Aundha Nagnath,
Taluka: Aundha Nagnath,
District: Hingoli, R/o: 'A-8, 'Nabhangan
Apartment, Hanuman Gad,
Nanded, Taluka and District: Nanded
4. Shivaji s/o Ramrao Potdar,
Age: 60 years, Occu.: Nil (Retired),
R/o: Potdar Niwas, Ashoknagar,
Mukhed, Taluka: Mukhed,
District: Nanded
5. Ramesh Motiram Chavan,
Age: 59 years, Occu.: Nil (Retired),
R/o: Kamal Sadan, Nagoba Nagar,
Ahmadpur, Taluka: Ahmadpur,
District: Latur
6. Gangadhar s/o Shankar Pentewad,
Age: 55 years, Occu.: Government

Service as Agriculture Officer (Technical),
in Office of the Taluka Agriculture
Officer, Umarkhed, District: Yeotmal,
R/o: Krushnur, Taluka: Naigaon,
District : Nanded

7. Ram s/o Hanumantrao Navtakke,
Age: 62 years, Occu.: Nil (Retired),
R/o: Laxmi Niwas, Opposite Lal
Bahaddur Shastri School, Old Ausa
Road, Latur, Taluka and District:
Latur.
8. Vijaykumar s/o Anantrao Naik,
Age: 57 years, Occu.: Government
Service as Agriculture Officer
in the Office of the Divisional
Joint Director of Agriculture, Pune
R/o: Atlanta-II, New Wakad,
Hinjawadi, Link Road, Wakad,
Pune
(Abated)
9. Narsing s/o Govindrao Mangalwad,
Age: 58 years, Occu: Government
Service as Agriculture Officer (Technical)
in the Office of District Superintendent
of Agriculture Officers, Yeotmal,
District: Yeotmal, Original R/o:
Hirgovind, Near Civil Hospital,
At Post: Shirur Tajband, Taluka:
Ahmadpur, District: Latur,
Presently residing at C/o Trimbak
s/o Jagannath Sontakke, 'Shri Shailya',
L-83/3233, Vidarbha Housing Society,
Near Sai Mandir, Bajoriya Nagar,
District: Yeotmal.
10. Madhukar s/o Sahebrao Pole,
Age: 57 years, Occu.: Government
Service as Taluka Agriculture Officers
(Suspended), At present in the
of the Divisional Joint Director of
Agriculture, Latur, R/o: Balajinagar,
Karmala, Taluka: Karmala,
District: Latur

... Applicants

Versus

1. The State of Maharashtra
Through the Police Sub Inspector,
Mukhed Police Station, Mukhed,
Taluka: Mukhed, District: Nanded
2. Shivaji s/o Raman Shinde,
Age: 30 years, Occu.: Government
Service as Agriculture Officer (Technical)
in the office of the Sub Divisional
Agriculture Officer, Degloor,
Taluka: Degloor, District : Nanded,
R/o: Degloor, Taluka: Degloor,
District : Nanded

... Non-Applicants
(No.2 – Orig. Informant)

.....
Mr. R. S. Deshmukh, Sr. Advocate i/b Mr. D. R. Deshmukh, Advocate for
Applicants
Mr. A.R. Kale, APP for Respondent No.1/State
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SMT. MANJUSHA DESHPANDE, J.J.**

DATE : 10th FEBRUARY, 2025

PER COURT (PER SMT. MANJUSHA DESHPANDE, J.):

1. Applicant Nos.1 to 10 are employees of the Agriculture Department and were working on the post of Agriculture Supervisor / Agriculture Officer (Technical) at their respective posting mentioned in the chart given in the memo of application. Crime No.171/2016 came to be registered at the instance of non-applicant No.2 on 27/11/2016, with Mukhed Police Station, District Nanded, for offence punishable under Sections 409, 420, 465, 468 and 471 of Indian Penal Code.
2. Allegations in the complaint are that Integrated Water Shade Management Programme (IWMP) was implemented in Mukhed

Taluka and during the period from 2011-2012 to 2012-2013. Alleged misappropriation has been done in the work carried out at villages Dapka Raja, Maghyal, Vartala, Pakhedwadi, Shelkewadi, Taluka Mukhed. An inquiry was initiated at the behest of complaint lodged by one Raju Vijayrao Raherkar, r/o Mukhed, District Nanded, on 03/10/2014, in respect of economic defalcation made during the period from 2011-2012 and 2012-2013 in the work done under the Integrated Water Management Project. Pursuant to the complaint Sub-Divisional Agricultural Officer made inquiry regarding work carried out under the scheme and submitted inquiry report to the Government. As per the inquiry report, entries in respect of work done to the tune of Rs.52,78,052/- were made, however, amount of Rs.46,57,373/- has been misappropriated, without there being any kind of work yet taking entries in the measurement book. Thus, only work to the tune of Rs.6,20,679/- was actually done.

3. It is alleged in the inquiry report that misappropriation has been committed by five officers and seven clerks in furtherance of common intention. The concerned officers have committed misappropriation of Government money and thereby cheated the Government. The amount of misappropriation and cheating was attributed to each of the incumbents from Sr. 1 to 12 as has been quantified by the inquiry officer. The inquiry report discloses their involvement in the offence. Therefore, it was decided to lodge FIR

against respective officers. Accordingly, FIR No. 171/2016 came to be registered against applicants on 27/11/2016. Applicant Nos. 1, 3, 4 and 6 to 10 obtained anticipatory bail from this Court, while applicant Nos.2 and 5 obtained anticipatory bail from the Sessions Court by filing respective applications.

4. During pendency of this application, Criminal Application No.123/2022 was filed seeking amendment to the present application, since charge-sheet came to be filed. Therefore, permission was sought to amend the application and accordingly amendment has been carried out challenging the Final Report against applicants and prayer to quash Final Report bearing No.13/2018 submitted in the Court of Judicial Magistrate First Class, Mukhed, on 22/02/2018 against applicants, is made.

5. When the matter was heard on 21/01/2025, learned Senior Advocate Mr. R. S. Deshmukh, sought accommodation to place on record some documents and he was granted liberty to produce documents on or before 03/02/2025 by giving copy of the same to the other side in advance. When the matter is listed today, learned Senior Advocate appearing for applicants places reliance on the various orders passed by the Minister, Food, Civil Supply and Consumer protection, in respect of applicant No.1 Bapusaheb Shivajirao Patil, applicant No.2 Nagendra s/o Bhujangrao Rathod, applicant No.3 Sachin s/o Gangadharrao Bodamwad, applicant No.4 Shivaji s/o

Ramrao Potdar and applicant No.5 Ramesh Motiram Chavan. According to learned Senior Advocate applicant No.8 is reported to be dead. Therefore, criminal application stands abated against applicant No.8. In view of the decisions which have been placed on record in respect of applicant Nos.1 to 5, learned Senior Advocate has categorically made statement that he is pressing the present Application for relief only in respect of above mentioned applicant Nos.1 to 5.

6. The orders passed in the appeals filed by applicant Nos.1 to 5 discloses that departmental inquiry was initiated against applicants under Rule 8/12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The imputation of charges was served on the delinquents. There were two charges with regard to the applicants. First charge was regarding excess disbursement of amount towards preparation of project report with regard to the Integrated Water Management Programme. The other charge was regarding expenses which were incurred for preparation of D.T.P. It is further stated that amount which has been spent by delinquents is required to be recovered from respective delinquents. It was alleged that the incumbents have committed misconduct by violation of Rule 3 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

7. After conducting full-fledge inquiry, punishment was imposed by the disciplinary authority on respective delinquents under

Rule 5 (1) (3) and (4), of stoppage of one yearly increment without affecting future increments, and further directed to recover amounts of Rs.4,99,232/-, Rs.7,10,266/-, Rs.3,86,668/-, Rs.4,40,168/- and Rs.3,86,666/- from applicant Nos.1 to 5 respectively. Applicant Nos.1 to 5 had preferred appeal before the Governor of Maharashtra against the punishment imposed on them. The Governor has delegated powers to the Minister on 09/08/2024. Accordingly, after hearing the respective applicants as well as the Department, the Appeals of applicants herein have been allowed by the Minister vide orders dated 30/09/2024 and 11/10/2024, thereby exonerating applicants from allegations made against them.

8. It is the contention of learned Senior Advocate that inquiry was conducted in respect of works done in the year 2011-2012 and 2012-2013 on the basis of complaint filed in the year 2014. The works were done during the period from 2009 to 2013 and it's inspection was conducted in the year 2014. Hence, the inspection was carried out after a period of four years. Therefore, the Minister has rightly allowed the appeals filed by applicant Nos.1 to 5. The works carried out were regarding Bandh constructed under the said scheme and the inspection was conducted after two seasons of monsoon was over. Therefore, there was nothing likely to be found on the spot. It is very much likely that works carried out were disturbed due to natural elements like rain, sun and wind. The Bandhs are also likely to be

destroyed on account of excess rain. Therefore, nothing was found on the spot. After considering various aspects the Minister has rightly allowed the appeals and has exonerated applicants.

9. The report of inquiry conducted by Sub-Divisional Agriculture Officer attributing misappropriation to the applicants, which was the very basis of departmental inquiry, has been held to be incorrect and even the amounts spent by the respective officers towards work was found to be within the limits prescribed under the scheme. Since the inquiry report was found to be incorrect and unsustainable, the applicants / delinquents have been exonerated. According to learned Senior Advocate, since the very basis of initiation of departmental inquiry as well as criminal prosecution itself is rendered untenable and is supported by reasons, the criminal prosecution lodged against applicants with same allegations becomes unsustainable and therefore, the same is required to be quashed and set aside.

10. Learned APP, on the other hand, has opposed the prayer made by applicants contending that the standard of proof for criminal prosecution and departmental inquiry are distinct. The standard of proof in the departmental inquiry is not of the same standard which is required to be proved in criminal prosecution. Criminal prosecution requires stricter and stringent standard of proof to prove the allegations. Therefore, merely exoneration in the departmental inquiry

would not render the criminal prosecution infructuous. Therefore, the applicants claim for quashing of FIR on the basis of exoneration in the departmental inquiry deserves to be rejected.

11. We have heard learned Senior Advocate for applicants and learned APP for the State and have also gone through the documents produced along with the application and also the documents produced subsequently as permitted by this Court. Undoubtedly, the inquiry was initiated on the basis of complaint made by one Raju Vijayrao Rahekar, on 03/10/2014. According to him, without actually carrying out any work bogus entries have been taken in the measurement book, on the basis of which huge amounts have been misappropriated by the Agriculture Officers posted at various places. He has given various instances of misappropriation and irregularities and has requested an in-depth inquiry with regard to the misappropriation. Pursuant to the complaint, inquiry was conducted and report is submitted by the Sub-Divisional Agricultural Officer, Degloor. The said report is the basis of FIR lodged against present applicants. It is alleged in the inquiry report that entries in respect of work done to the tune of Rs.52,78,052/- was taken, however, entries to the tune of Rs.46,57,373/- were bogus and without actually doing the work. Therefore, responsibility was fixed on each of the officers along with the amount which was directed to be recovered from them. The amount of recovery alleged in the report has been disputed by

the applicants since the final report bearing No.13/2018 has been submitted on 22/02/2018. The copy of charge-sheet is also placed on record by the applicants. Though the complaint is filed on the basis of inquiry report, however, pursuant to the said inquiry report when the departmental inquiry was conducted and penalty has been imposed on the applicants, it has been challenged before the Governor and the appeals before the Governor have been allowed by the orders passed by the Minister, who was delegated powers to decide the appeals.

12. Upon going through the decision given in respect of each of the applicants, the Minister has recorded finding that the order of recovery which is issued against applicants is unwarranted, since the expenses allegedly incurred by applicants in excess, were in fact within the permissible limits. The amount sanctioned for the work was more than the amount which was incurred for the said work. For example, amount of Rs.6,07,45,000/- was sanctioned for the project and 1% of that amount i.e. Rs.6,07,450/- is permissible for D.P.R., however, for D.P.R. amount of Rs.4,46,000/- has been spent, which is 27% less. As a result, the amount has been saved. So far as expenditure for D.T.P. is concerned, Rs. Rs.60,000/- has been spent, which according to the budgetary provisions is less than the amount permissible for preparation of maps, budget estimate, five copies of each documents, etc. Therefore, it is less than what has been sanctioned for the said works.

13. It is settled position of law that the Court should sparingly exercise powers under Section 482 of Cr.P.C. it can certainly be exercised where it would amount to abuse of process of law if the criminal prosecution is allowed to continue. In present case, it would amount to abuse of process of law if applicant Nos.1 to 5 herein are made to face the trial on the background of exoneration of applicants from the allegations made against them. The very basis of allegations of offences punishable under Sections 409, 420, 465, 468 and 471 of Indian Penal Code, has been taken away by the orders passed by the Minister.

14. The Minister has passed similar orders in the appeals filed by applicant Nos.1 to 5. The operative part of the order passed in appeal filed by one of the applicant Bapusaheb Shivajirao Patil reads thus:-

“डीपीआर तयार करण्यासाठी जे निकष ठरविले त्यापेक्षा कमी खर्च झालेला आहे, ही बाब विचारात घेता, श्री. बापुसाहेब शिवाजीराव पाटील, तत्कालीन कृषि पर्यवेक्षक, तालुका कृषि अधिकारी कार्यालय, मुखेड, जि. नांदेड यांनी कृषि विभागाच्या दि.01.02.2023 च्या शिक्षा आदेशाविरुद्ध दि.05.08.2024 च्या अर्जान्वये केलेले अपील मान्य करण्यात येत असून त्यांना “दोषमुक्त” करण्यात येत आहे.”

15. The Minister while allowing appeals has observed that there is no substance in the allegations made in the inquiry, on the basis of which the penalty is imposed. Charges on the basis of which departmental inquiry is initiated and the charges in the FIR are one

and the same. The Minister has recorded a finding that charges on the basis of which departmental inquiry is initiated are baseless, and applicants have been exonerated of the same. The standard of proof required to establish guilt in criminal cases is much higher than the standard of proof required to establish guilt in the departmental proceedings. Considering that charges against applicant Nos.1 to 5 could not be sustained and proved in the appeals before the Minister and applicant Nos.1 to 5 have been exonerated, there is no likelihood of establishing guilt in the criminal case.

16. The case of applicant Nos.1 to 5 stands squarely covered by the observations made by the Hon'ble Supreme Court in **P. S. Rajya Vs. State of Bihar**, reported in **(1996) 9 SCC 1**, paragraph No.17 would be relevant for the present case which reads thus:-

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings...."

17. In view of the above observations as well as the decision of Supreme Court in **Lokesh Kumar Jain Vs. State of Rajasthan**, reported in **(2013) 11 SCC 130**, wherein the decision in **P. S. Rajya** (supra) has been relied by the Hon'ble Supreme Court, while quashing the FIR, where the allegations in the departmental proceedings and the FIR were identical, the case of applicant Nos.1 to 5 stands covered by the above decision.

18. It would amount to abuse of process of law if the prosecution is continued based on the same allegations wherein applicants have been exonerated in Departmental Appeal. Therefore, in view of the judicial pronouncements of Hon'ble Supreme Court, more particularly in case of **State Of Haryana And Others vs. Ch. Bhajan Lal and Others**, reported in **1992 SCC (SUPP) (1) 335** and **R. P. Kapur vs. The State of Punjab**, reported in **[1960] 3 SCR 388**, the criminal application deserves to be allowed.

19. Considering that the allegations made against applicants have proved to be false, incorrect and misplaced, the orders exonerating applicants have been passed. Since the very basis of filing of complaint i.e. the inquiry report itself has been proved to be incorrect by the orders passed by the Minister, the FIR registered against applicant Nos.1 to 5 deserves to be quashed and set aside. Accordingly, the Criminal application to the extent of applicant Nos.1 to 5 is allowed. Crime No.171/2016, registered with Mukhed Police

Station, District Nanded, for offence punishable under Sections 409, 420, 465, 468 and 471 of Indian Penal Code and the Charge sheet/Final Report No.13/2018 submitted in the Court of Judicial Magistrate First Class, Mukhed, on 22/02/2018, against applicants in R.C.C. No.34/2018, is quashed and set aside to the extent of applicant Nos.1 to 5. Criminal application against applicant Nos.6, 7, 9 and 10 stands dismissed as not pressed.

20. With the above directions the criminal application is disposed of.

(SMT. MANJUSHA DESHPANDE, J.) (SMT. VIBHA KANKANWADI, J.)