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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1858 OF 2024

Goroba S/o. Vitthal Aavachar,
Age: 51 years, Occu: Service,
R/o. Limboni Gag, Tambari Vibhag,
Dharashiv, Tq. & Dist. Osmanabad.

... Applicant

Versus

1. State of Maharashtra
Through PI. Police Station Anandnagar,
Osmanabad (Dharashiv)
Tq. & Dist. Osmanabad.

2. The Chief Officer,
Municipal Council,
Osmanabad (Dharashiv)
Tq. & Dist. Osmanabad

3. Manoj S/o. Dattatray Kallure,
Age: Major, Occu: Service,
Assi. Town Planning Officer,
Municipal Council,
Dharashiv (Osmanabad).

... Respondents

.....
Mr. Jaydeep S. Kadam, Advocate for Applicant
Mr. G.A. Kulkarni, APP for Respondent No.1 – State
.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 24 SEPTEMBER, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. **Rule.** Rule made returnable forthwith by consent of parties heard finally.

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2. The present criminal application filed under Section 482 of Cr.PC, praying for quashing of FIR No. 412 of 2023 registered with Anandnagar Police Station, District Usmanabad for offences punishable under Section 166, 409 read with 34 of Indian Penal Code (IPC). The applicant seeks quashing of the said FIR primarily on the ground that he was merely a Clerk working in the Nagar Parishad Dharashiv and had no role or authority in sanctioning or approving the *Gunthewari* (regularization proposals), alleged to have been irregularly approved, resulting in alleged misappropriation of public funds.

3. The prosecution case in brief is that the informant Manoj Dattatreya Kalure, who is working as Planning Assistant at Nagar Parishad Dharashiv have lodged the FIR stating that on 2nd December, 2023 stating that the stating that during the tenure of Shri Hari Kalyan Yalgate, Chief Officer of Nagar Parishad Dharashiv, several *Gunthewari* proposals were sanctioned in contravention of prescribed rules leading to large scale of misappropriation of public funds. It is further alleged that on 25th July 2023, the Collector, Dharashiv constituted an inquiry Committee under the Chairmanship of Shri Muravkar, Assistant Director, Town Planning Department, Dharashiv. The said Committee after scrutiny of available records submitted a report on 26th September, 2023 to the Collector opining that irregularities and misappropriation

had indeed taken place in the sanctioning of *Gunthewari* proposals. Acting upon the said report, the collector called for written explanations from the concerned officials and further directed that a criminal offence be registered under SectionS 166 and 409 of IPC. Pursuant thereto, the present FIR came to be lodged against Shri Vidhate, Shri Kawde, the present applicant, and Shri Hari Kalyan Yalgate alleging collective involvement in the financial irregularities while handling the proposal of *Gunthewari*.

4. The learned Advocate for the applicant submitted that the applicant was at all material times working as Clerk in the Nagar Parishad and had no authority to sanction or approve or verify the Gunthewari proposals. His limited role was purely ministerial; namely, to place files before the higher officers. It is contended that the power to grant sanction or approval lies exclusively with the Chief Officer and other superior authorities as per the Maharashtra Municipalities Act. The learned Advocate for the applicant further argued that the entire proceedings have been initiated at the behest of political leaders following questions raised in the Legislative Assembly by the local MLA and that the inquiry and FIR were motivated by political vendetta. According to the applicant, there is not a single averment in the FIR attributing any act of misappropriation or dishonest intention against

him. The learned Advocate further argued that the continuation of prosecution against the applicant despite absence of any specific role or *mens rea* amounts to an abuse of process of law. Reliance is placed on several settled principles that mere clerical or forwarding duties cannot attract criminal liabilities under Sections 166 or 409 of IPC which requires proof of willful misconduct and criminal breach of trust.

5. Per Contra, learned APP opposed the application and submitted that the FIR is based on detailed inquiry report submitted by a duly constituted committee after scrutiny of more than 1070 *Gunthewari* proposals handled by the concerned officers including the applicant. It is submitted that during investigation, the investigating officer sought an expert opinion from the Office of the District Collector by letter dated 14th December, 2023 and the expert submitted a detailed opinion on 28th February 2024 further corroborating that serious irregularities had occurred in handling *Gunthewari* proposals. The learned APP emphasized that statements of several witnesses from the various departments and also the officers who had been part of the inquiry committee have been recorded which indicates that documents relating to the proposals were found to be incomplete, non-agricultural taxes were not collected and unauthorized rebates up to 50% were granted without any legal provisions by the accused persons. These irregularities

according to the prosecution suggest a concerted act by all the accused persons including the present applicant. It was therefore submitted that at this nascent stage of investigation when the voluminous documents and multiple cases are under scrutiny, it would be premature and improper for this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

6. We have carefully perused the FIR, the material annexed thereto and considered the submissions advanced by both the sides. The power under Section 482 Cr.P.C is to be exercised sparingly and with great caution. The guiding principles for quashing of an FIR have been laid down in the celebrated judgments of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajanlal***, reported in 992 Supp. (1) SCC 335, and ***Niharika Infrastructure Pvt. Ltd. v. State of Maharashtra***, 2021 (6) SCC 73. The consistent view of the Apex Court is that where the allegations *prima facie* disclose a cognisable offence, the Court should not stifle legitimate investigation at an early stage. In the present case, the FIR has been lodged pursuant to an official inquiry conducted by a competent Committee constituted by the Collector. The inquiry revealed systematic irregularities in *Guntewari* approvals involving public money and potential loss to the municipal body. The allegations therefore cannot be said to be frivolous or absurd on the face of it. The applicant's

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principal defence that he was a mere clerk with no decision-making authority appears to be a matter of defence which can be tested only upon appreciation of the evidence during trial. Whether the applicant was merely performing ministerial functions or actively aided in processing irregular proposals is a question of fact, requiring examination of documentary records and witness testimonies. This Court cannot embark upon such a factual inquiry under Section 482 of Cr.P.C. Moreover, the investigation appears to be at a preliminary stage. The Investigating Officer has yet to complete scrutiny of voluminous records, ascertain financial trails and identify individual responsibilities. Interference by this Court at this juncture would obstruct a lawful investigation into a serious allegations of misappropriation and breach of trust involving public funds. The contention regarding political motivation or *male fides* also cannot be accepted at this stage in absence of impeccable material. The FIR is based on an official inquiry report by statutory authorities, not a private complaint. Allegations of political influence are thus speculative at this point.

7. Accordingly, having regard to the gravity of the allegations, the stage of investigation and the legal position governing exercise of inherent powers, we are of the considered opinion that this is not a fit case for quashing of the FIR. The applicant is at liberty to raise all

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contentions regarding lack of involvement or authority before the Investigating Officer during investigation or before the trial Court at the appropriate stage. We find no illegality, arbitrariness or abuse of process in registration of the FIR. The prosecution must be permitted to proceed to investigate and draw its logical conclusion.

8. The criminal application thus stands rejected.

9. Rule discharged.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane