



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 CRIMINAL APPLICATION NO.3369 OF 2024

- 1 Dr. Sudhakar Tukaram Jagtap,
Age 56 yrs., Occ. Service as
Deputy Commissioner,
Municipal Council Administration,
Navi Mumbai,
R/o 2403, Elecia Building,
G.B. Road, Thane.
- 2 Ashok Vasant Sable,
Age 45 yrs., Occ. Service as
Chief Officer, Lonavala
Municipal Council, Dist. Pune,
R/o 1004, Oxygreen Residency,
Moshi Pradhikaran, moshi,
Pune.
- 3 Ajay Vijay Kasture,
Age 55 yrs., Occ. Service as
Deputy Engineer,
District Administration Department,
Collector Office, Latur,
R/o Moti Nagar, Latur.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
City Police Station, Ambajogai,
Dist. Beed.
- 2 Kanhopatra w/o Vishnu Kendre,
Age 44 yrs., Occ. Business,
R/o village Umrai, near Ladewadgaon,
Tq. Ambajogai, Dist. Beed.

... Respondents

...

Mr. S.V. Natu, Advocate for applicants

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. M.D. Gitte, Advocate for respondent No.2

...

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

DATE : 07th APRIL, 2025

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

1 Present application has been filed for quashing First Information Report vide Crime No.21/2024 dated 19.01.2024 registered with City Police Station, Ambajogai, Tq. Ambajogai, Dist. Beed, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.V. Natu for applicants, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. M.D. Gitte for respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Applicant No.1 is presently working as Deputy Commissioner, Municipal Council Administration, Navi Mumbai, applicant No.2 is presently

working as Chief Officer, Municipal Council, Lonavala and applicant No.3 is presently working as Deputy Engineer, District Administration Department, Collector Office, Latur. When applicant Nos.1 and 2 were attached to Municipal Council, Ambajogai, it is alleged that there is a misappropriation. Respondent No.2 in her First Information Report contends that she runs a Garden Nursery at village Umrai since 2001. Municipal Council, Ambajogai had awarded a contract for plant/sapling cultivation and conservation to an agency viz. Siddhi Construction for a period of one year. The tender was floated on 04.07.2018 for 14 sites. Respondent No.2 contends that said Siddhi Construction had sub-contracted the tender work to her company on 16.07.2018. That Siddhi Construction had also permitted to withdraw the amount of tender work by submitting necessary documents with Municipal Council, Ambajogai. Her company has done the work and then after the period of one year she requested Municipal Council to disburse the amount to her, however, she was informed that said amount has been paid to Siddhi Construction in four installments. Therefore, informant alleges that there is misappropriation of amount of Rs.8,96,775/-.

4 Learned Advocate for applicants submits that in fact, there was no provision for sub-contract in the entire tender process. In the capacity of then Chief Officer of Municipal Council applicant Nos.1 and 2 had paid the

amount upon the necessary documents regarding completion of work. In fact, initially the police were not ready to record First Information Report and then informant approached learned Judicial Magistrate First Class, Ambajogai by filing Miscellaneous Criminal Application No.590/2023 for investigation under Section 156(3) of the Code of Criminal Procedure. By order dated 17.01.2024 that application came to be allowed. However, it appears that entire documents of tender were not placed before learned Magistrate. The contract upon the tender was between Siddhi Construction and Municipal Council. The Municipal Council never made a contract with the company of informant, therefore, no question of payment of any money to respondent No.2. Therefore, it would be unjust to ask applicants to face the trial and even the investigation.

5 After the notice was issued to respondent No.2, respondent No.2 appeared through Advocate and filed affidavit-in-reply, wherein it is stated that respondent No.2 does not want to proceed with the matter as there is a compromise between herself and said Siddhi Construction.

6 Here, it is to be noted that in the entire First Information Report it is not stated nor respondent No.2 is placing on record the contract that had taken place between Municipal Council and Siddhi Construction to whom the tender was given; in respect of creation of sub-contract. If creation of sub-

contract is against the contract between Municipal Council and Siddhi Construction, then Municipal Council is not responsible for the terms and conditions between Siddhi Construction and company of informant. It appears that this basic document was not seen by learned Magistrate. The documents on record which have been filed by present applicants are the parts of official communication by them and certainly those can be considered here. In the series of communication it was stated that there was no provision for sub-contract. Copy of contract which was executed between Siddhi Construction and Chief Officer, Municipal Council, Ambajogai has been produced, wherein Siddhi Construction has taken all responsibility to do the work, to submit the bills, even to pay EPF in respect of labours which would be employed by it etc. If the informant herself had not taken care at the time of entering into the contract, as to whether she is entering into the contract with Siddhi Construction itself is legal or not, then the present applicants, who were not party to the contract of informant, cannot be held responsible for anything.

7 Now, respondent No.2 states that she does not want to proceed with the matter as there is compromise between herself and Siddhi Construction. In fact, respondent No.2 appears to have given a criminal colour to the civil litigation which could have been there, at the most,

between herself and Siddhi Construction. At no point of time there was any kind of representation between present applicants and informant, so as to chit her. None of the ingredients of offence were attracting against present applicants yet; unfortunately, learned Judicial Magistrate First Class, Ambajogai did not see all these facts. Respondent No.2 has unnecessarily filed the said complaint and it appears that by misleading the facts and documents got the order under Section 156(3) of the Code of Criminal Procedure in her favour. Therefore, we impose cost on respondent No.2 for such act. We, therefore, proceed to pass following order.

ORDER

- i) Criminal Application stands allowed.
- ii) First Information Report vide Crime No.21/2024 dated 19.01.2024 registered with City Police Station, Ambajogai, Dist. Beed, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Dr. Sudhakar Tukaram Jagtap**, 2) **Ashok Vasant Sable** and 3) **Ajay Vijay Kasture**.
- iii) Respondent No.2 to deposit cost of Rs.30,000/- (Rupees Thirty Thousand only), on or before 05.05.2025, with the Registry i.e. the

Committee consisting of Dr. Sanjay Warade, Medical Officer, Government Dispensary, High Court of Bombay, Bench at Aurangabad and learned Registrar (Administration), High Court of Judicature at Bombay, Bench at Aurangabad.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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