



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CRIMINAL WRIT PETITION NO. 1499 OF 2024

Balbhim Laxmanrao Jaher Patil

VERSUS

The State Of Maharashtra

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Mr. Gandhi Amol Subhash, Advocate for the Petitioner

Mrs. Chaitali Chaudhari Kutti, APP for Respondent State

CORAM : Y. G. KHOBRAGADE, J.

Dated : 24th February, 2025

PER COURT :-

1. Heard at length Mr. Amol Gandhi, the learned counsel for the Petitioner. The learned APP waives service of notice on behalf of Respondent/State.

2. By the present petition under Article 227 of the Constitution of India, the Petitioner has impugned the order dated 08.11.2023, passed by the learned Additional Sessions Judge, Ambajogai Dist. Beed in Criminal Revision Application No. 58 of 2019, whereby upheld the order dated 04.09.2019, passed below Exh. 27 in R.C.C. No. 388 of 2009, passed by the learned JMFC, Parli Vajinath.

3. On face of record it appears that, on 23.05.2008, one Shivaji

Shriram Munde, Extension Officer of Panchayat Samiti Parali lodged a report with Parali Police Station alleging that, the accused have misappropriated an amount of Rs.11,44,933/- in constructing the water tank under Jalswarajya Scheme. On the basis of said report, a Crime No. 106/2008 registered against the accused persons including the present petitioner for the offence punishable under Sections 468, 471, 409 read with section 34 of the Indian Penal Code, 1860. The Investigating Officer, after collecting sufficient evidence filed the charge sheet against the accused persons for the offence punishable under Sections 468, 471, 409 read with section 34 of the Indian Penal Code, 1860.

4. The learned counsel for the petitioner/accused No. 3 canvassed that, the Investigation Officer conducted investigation and recorded statements of witnesses, however, the petitioner was entrusted work only to draw sketch map of overhead tank and map for installation of pipeline. Subsequently, another Technical Agency was appointed by the Committee constituted by the Panchayat Samiti. It is further canvassed that, the petitioner has not received any remuneration and he has not been benefited financially. During course of investigation, though the Investigation Officer collected evidence about payment of amount of Rs.40,000/- to the

petitioner towards honourarium, but on 14.06.2008, the Investigation Officer received a communication from the Branch Manager, State Bank of Hyderabad, Nagapur Branch that no information was received about Cheque No.221252 dated 08.04.2005 for amount of Rs. 40,000/-. Accordingly, it was informed to regional office, Beed. Therefore, the petitioner/accused No.3, filed Exh. 27, an application under section 239 of the Criminal Procedure Code and prayed for discharge on the following grounds:

- (a) The Petitioner/Accused no. 3 is not concerned with the purchase of material for the construction of overhead water tank but he has only prepared a draft estimate and submitted to the competent authority for its approval.
- (b) The Petitioner/Accused no. 3 has not obtained and withdrawn any amount from the account bearing No. 52199040110 as alleged by the informant.
- (c) The Petitioner/Accused no. 3 is not signatory for withdrawal of alleged amount.
- (d) Statements of witnesses show that all the material are purchased by Shri Anant Ambolikar and not by the petitioner/accused No.3.

(e) The alleged offence committed in between 05.05.2005 to 01.12.2006, however, the report was lodged on 23.05.2008 and the delay has not been explained by the informant.

5. The prosecution resisted said application by filing Exh. 72. According to the Investigating Officer, material collected during the course of investigation and produced alongwith charge sheet prima shows about involvement of the petitioner/accused while misappropriating the Government fund of Rs.11,44,933/- in connivance with the President/Secretary, Technical supplier Engineer. So also, as per Audit Report, the present petitioner/accused no.3 received the Rs.40,000/-. Therefore, sufficient material is available on record to frame charge against the present petitioner/accused No.3, hence, prayed for dismissal of the petition.

6. On 04.09.2019, the learned Judicial Magistrate, First Class passed the order holding that, the present petitioner/accused no.3 is involved in committing serious nature of offence of misappropriation of huge amount of Rs.11,44,933/-. So also, the Investigating officer collected sufficient material against the petitioner/accused to frame charge against the accused. Being

aggrieved by said order, the present petitioner/accused no.3 had filed Criminal Revision Application No. 58 of 2019 before the learned Additional Sessions Judge, Ambajogai, Dist. Beed. On 08.11.2023, the learned Revisional court passed the impugned order and upheld order dated 04.09.2019 passed by the learned JMFC below Ex. 27 in RCC No. 388/2009.

7. The learned counsel appearing for the petitioner canvassed in vehemence that, the petitioner is proprietor of Champavati Technical Consultant. The Petitioner/Accused had only drawn sketch map for overhead tank and water pipeline. The petitioner has not purchased any material for construction of overhead tank or for laying of pipelines. The material collected by the Investigation Officer is not sufficient to frame charge against the accused, so also, no agreement was executed between the petitioner and the Committee of Panchayat Samiti. Therefore, the continuation of proceeding would certainly abuse the process of law, hence prayed to quash and set aside the same.

8. Needless to say that, the Petitioner/accused No.3 is the proprietor of Champavati Technical Consultant. The Petitioner/accused himself stated that, he has prepared draft plan for

overhead tank and map for laying pipeline. As per material on record, the present petitioner received a cheque of Rs.40000/- towards his remuneration for drawing sketch map for overhead tank and pipeline. As per Audit Report, the present petitioner/accused no.3 received the Rs.40,000/-. The statements recorded by the Investigating Officer and material produced alongwith charge sheet prima facie show about involvement of the petitioner/accused no.3 while committing the offence alongwith other accused. The petitioner has not denied about receipt of Rs.40,000/- vide Cheque No.221252 dated 08.04.2005.

9. Section 239 and Section 240 of the Criminal Procedure Code provides as under:

239. When accused shall be discharged.

- If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by

him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

10. During course of investigation, the Investigation Officer collected substantial material. The petitioner/ accused drawn the sketch map of overhead tank, map for laying pipeline and received remuneration, which shows intention of the petitioner in furtherance of common intention to cheat the Government and to misappropriate the government fund. Therefore, findings recorded by both the Courts below are just and proper. Therefore, it does not warrant interference at the hands of this Court. Hence, the Criminal Writ Petition is hereby dismissed.

(Y. G. KHOBRAGADE, J.)

JPChavan