



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.1322 OF 2021

Panjabrao Jangluji Patil,
a/a 67 years, occupation : business,
r/o plot No.57, Near Ganesh Mandir, Fiske Layout,
Dhantoli, Katol,
district Nagpur. **Applicant.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Sadar, Nagpur.

2. Sanjeev Balwant Hemke,
aged 55 years, occupation: service,
Add: Executive Engineer, Public
Works Department, Zilla Parishad, Civil Line,
Nagpur, district Nagpur. **Non-applicants.**

Shri Abhay Sambre, Counsel for the Applicant.
Shri M.J.Khan, Addl.PP for the NA No.1/State.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 18/11/2025

PRONOUNCED ON : 24/11/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

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1. By this application, the applicant is seeking quashment of FIR in connection with Crime No.382/2021 registered under Section 420 read with 34 of the IPC and consequent proceeding arising out of the same bearing RCC No.4211/2022 pending before learned Chief Judicial Magistrate, Nagpur.

2. Brief facts of the prosecution case emerged from the police papers are as under:

On 24.8.2021, non-applicant No.2 lodged a report with Sadar Police Station, Nagpur alleging that he works as Executive Engineer, Public Works Department, Zilla Parishad, Nagpur. He has been authorized to lodge FIR. It is alleged that 8 works were allocated to “Nanak Construction and Firm”. The stipulated time to take security amount was not completed. Despite the same, the security amount was withdrawn and thereby committed cheating with the Government. On the basis

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of the said report, the police registered the crime against the applicant under Section 420 read with 34 of the IPC.

3. As per the submissions of learned counsel Shri Abhay Sambre for the applicant that “Nanak Construction” and “Nanak Infratech” are partnership firms. Roshan Patil and Manjusha Patil are partners of “Nanak Construction”. Whereas, the applicant is partner of “Nanak Infratech” along with his wife Kamla. On 24.8.2021, the informant has lodged the report at the police station alleging non-completion of work in a stipulated time. In fact, the applicant is wrongly booked under Section 420 read with 34 of the IPC. Despite the fact that there was no evidence to remotely suggest that the applicant had any criminal intention or *mens rea*. No enquiry was conducted before registering the crime as the matter involves commercial dispute. It is submitted that unless and until the enquiry report is filed, there was no

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material to register the FIR. The dispute is of a purely civil nature which is to be resolved by mechanism provided under the tendered documents executed between the contractor and the Zilla Parishad, Nagpur. The action of registration of the crime against the applicant by the informant is illegal and contrary to the record as well as it is violation of Clause-30 of the Contract. As per Clause-32 of Special Conditions of the Contract, in case of any dispute, it shall be resolved as per provisions of Clause-30 of B-1 Form. As per Clause-30 of B-1 Form contains condition of contract, which provides that the decision of Superintendent Engineer is to be taken of and the contractor may within 30 days of receipt of the order the Superintending Engineer appeal to the Chief Engineer and if the contractor is not satisfied with the order passed by the Chief Engineer, the contractor may within 30 days of receipt of the order may

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appeal against the concern Secretary, Zilla Parishad, Nagpur. The firm “Nanak Construction” was allotted contract in respect of some projects. The work allocated of mauza Pardi has been completed 80% and bills are outstanding against the department. The work allocated of mauza Warorda has been completed 100% in the year 2019 itself. Final bill along with completion certificate issued by the authority are already submitted to the department. The work allocated of mauza Thadipawani has been completed and 80% bills are outstanding against the department. The work allocated of mauza Jamtha has been completed 100% in the month of April 2021 itself and final bill along with completion certificate issue by the authority are already submitted to the department. The work allocated of mauza Gondkhairi has been completed 95% and bills are outstanding against the department. The work allocated of mauza

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Kelwad has been completed 95% and bills are outstanding against the department. In all, more than Rs.3.5 crores is outstanding against the department in respect of above said works allocated to “Nanak Construction.” The projects allocated to “Nanak Infratech” of which the applicant is partner. The work of mauza Kharsoli, tahsil Narkhed has been completed 100% in the month of March 2019 itself. Whereas, the work allocated of mauza Rohana, tahsil Narkhed has been completed 100% in the month of March 2019 itself.

It is submitted that the offence is registered against the applicant due to personal grudge against the Water Conservator Officer Shri Gupta. He further submitted that even accepting the allegations as it is, no *prima facie* case is made out against the applicant. On the contrary, the investigation itself shows that security

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deposits are not withdrawn by the applicant and it is still pending with the applicant.

4. *Per contra*, learned Additional Public Prosecutor for the State opposed the said contentions and submitted that during the investigation, involvement of the applicant revealed and, therefore, the application deserves to be rejected.

5. On hearing both the sides and perusing the entire investigation papers, it reveals that as per Clause-20 of the tender in respect of E-Tender, period of 36 months from the date of completion is a period of defect liability. It has come in the investigation that the amount was withdrawn by the applicant before completion of three years. However, the work was completed on 6.2.2019 itself and period of defect liability of 36 months was over on 6.3.2022. It is alleged that it is clear violation of Clause-20 of the Agreement. Perusal of of

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the FIR, Clause-20 does not speak about retention of security deposit for 36 months. Whereas, it speaks about defect liability period and this can be seen from the language used in Clause-20 which contemplates that in case of any defect in the work, the damages caused are liable to be recovered from the contractor as arrears of land revenue or it can be deducted from the amount payable to the contractor or from the security deposits retained by the Government. The Government Resolution dated 12.4.2017, more particularly Clause-4.6.7, permits the contractor to withdraw the amount of security deposit after three months on completion of work and on certification about satisfaction of work by the Executive Engineer.

6. In this case, such certificate is on record which is signed by the Executive Engineer and Sectional Engineer which not only certifies the completion of work

but also it certifies that the work was completed as per the Standard Specification. It also clarifies that there is no recovery outstanding against the contractor.

7. As far as allegations regarding withdrawal of security deposit 37320605986 dated 24.11.2017 for work order No.10 of 2017-2018 for Rohana is concerned, the said security deposit is not withdrawn by anyone and is open with the SBI certificate to that effect. The chargesheet shows that the bank report/certificate shows it is still open. As per the tender document Clause-2.2, the contractor is required to deposit 4% of security deposit of the estimated cost or accepted tender cost whichever is higher. As per Clause-2.2, initial security deposit is 2% in the name of Zilla Parishad for minimum 15 months. As per Clause-2.2, deduction of 2% to running bills. As per Clause-2.2, additional security deposit, if quoted below 10% by way of fixed deposit for

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minimum 24 months. Thus, the security deposit is 2% since the applicant's firm quoted at the estimated rates. The applicant has deposited 1% security deposit at the time of submission of tender online and 1% in the form of Fixed Deposit of Rs.42,800/- on 24.11.2017. The work of the applicant is completed and completion certificate is issued with No Dues on 6.3.2019 which is a part of chargesheet. As per Clause-4(2), 100% security deposit to be refunded on payment of final bill, however 50% of the bank guarantee will have to be submitted for years. It is also clear from the investigation papers that original security deposit to be refunded with final bills. Thus, it is clear that 2% bank guarantee is required to be deposited and as per the practice adopted by the Zilla Parishad, they have decided 2% of the amount from all bills to secure 2% of defect liability period of 5 years. After completion of the said work in the 2019, the

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security deposit submitted by the applicant firm came to be discharged on 23.3.2021 exactly after two years from the date of completion of the certificate. The applicant was entitled to receive the same immediately in 2019 itself. The Zilla Parishad is having initial 1% online security deposit as well as 2% deduction though they are entitled to have only 2% of the tender amount. As on today, 3% security deposit are with the Zilla Parishad.

8. As far as allegations in the chargesheet regarding forgery of the documents are concerned, no specific material is collected during the investigation to show that it was the applicant who forged the said documents to withdraw the security deposit amount. The allegations are not supported by any material.

9. As far as the offence under Section 420 of the IPC is concerned, the requirement that there has to be

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intention since inception, which appears to be absent in the present case.

10. On going through the entire investigation papers, at the most, it may be violation of the tender clause. Even, the allegation regarding violation of the tender Clause-1 is also not made out against the applicant as the documents collected during the investigation are contrary to the allegation. The documents on record sufficiently show that the applicant has completed the work as per the Agreement entered by them.

11. As already observed, the tender document in respect of E-Tender 9 of 2017-2018, the period of 36 months from the date of completion is period of defect liability. As per the allegations, the amount of security deposit of Rs.42,800/- was withdrawn before completion of three years.

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12. Perusal of the FIR and the entire chargesheet shows that Clause-20 of the tender does not speak about retention of security deposit for 36 months. Whereas, it speaks about the defect liability period and this can be seen from the language used in Clause-20, which contemplates that in case of any defect in the work, the damages caused are liable to be recovered from the contractor as arrears of land revenue or it can be deducted from the amount payable to the contractor or from the security retained by the Government. The Government Resolution dated 12.4.2017, more particularly Clause-4.6.7, permits the contractor to withdraw the amount of security deposit after three months on completion of work and on certification about satisfaction of work by the Executive Engineer. such certificate is on record which is signed by the Executive Engineer and Sectional Engineer which not only certifies

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the completion of work but also it certifies that the work was completed as per the Standard Specification. It also clarifies that there is no recovery outstanding against the contractor.

13. In this view of the matter, no *prima facie* case is made out against the applicant.

14. The law relating to quashing of FIRs was explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supplementary (1) SCC 335** wherein principles have been laid down which are required to be considered while considering applications for quashing of the FIRs, which read as under:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted

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in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

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(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where

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there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

15. In this view of the matter, the application deserves to be allowed. Hence, we proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

(2) FIR in connection with Crime No.382/2021 registered under Section 420 read with 34 of the IPC and

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consequent proceeding arising out of the same bearing RCC No.4211/2022 pending before learned Chief Judicial Magistrate, Nagpur are hereby quashed and set aside to the extent of the applicant.

Application stands disposed of in the aforesaid terms.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!