



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.663 OF 2024

Rajendra Basantlal Choudhary, Aged
About 66 years, Occ. Retired, R/o. New
Shukrawari, Nagpur, Dist. Nagpur

... APPLICANT

...VERSUS...

The State of Maharashtra, through Police
Station Officer, Khaperkheda, Nagpur
Rural Police, Nagpur.

...NON-APPLICANT

WITH

CRIMINAL APPLICATION (APL)NO.276 OF 2013

Rajendra s/o Basantlal
Choudhary, Aged About 56
years, Occupation: Service,
Resident of Plot No. 125, New
Shukrawari, Nagpur, Tahsil
and Dist : Nagpur

... APPLICANT

...VERSUS...

The State of Maharashtra, through
P.S.O. Khaperkheda, Nagpur rural
police, Nagpur.

...NON-APPLICANT

Shri Mukesh Samarth, Senior Advocate with Shri C.M. Samarth, Advocate for applicant
Shri M.J. Khan, APP for non-applicants/State

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

RESERVED ON : 19.12.2025
PRONOUNCED ON : 14.01.2026

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. As far as Criminal Application (APL) No. 276/2013 is concerned, the same was admitted by this Court vide order dated 07.05.2013. As far as Criminal Application (APL) No. 663/2024 is concerned, we have heard the learned Counsel appearing for the respective parties.

2. **Admit.** Heard finally with the consent of learned Counsel for both parties.

3. Both these applications are arising even though out of different First Information Reports, and therefore different charge-sheets, however, the applicant is the same, and the allegations in

the First Information Report regarding the nature of the alleged offence is more or less identical, and therefore, being disposed of by a common judgment.

4. As far as Criminal Application (APL) No. 276/2013 is concerned, the said application prays for quashing of the First Information Report bearing No. 24/2008 and the consequent Chart-sheet filed bearing Final Report No. 34/2008, culminating in Criminal Case No. 224/2008.

5. As far as Criminal Application (APL) No. 663/2024 is concerned, the said application seeks quashing of the Charge-sheet in Criminal Case No. 223/2008 arising out of First Information Report bearing Crime No. 0019/2008, registered with the Khaparkheda Police Station, Nagpur, for the offences as mentioned in the said sections. It is relevant to point out that initially, both the First Information Reports mentioned supra were filed for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code. In both the First Information Reports, the name of the present applicant did not appear initially, but in the charge-

sheet, the applicant is arrayed as an accused after the investigation by the prosecution.

6. Both the First Information Reports are lodged by the Tahasildar alleging that one Mohammad Asif Sheikh Dilawar i.e. the original accused No.1 herein was granted permission to excavate sand as per the terms and conditions of the agreement for a period of 01.08.2007 to 31.01.2008.

7. However, as per the said First Information Report, the accused, without taking measurements of the land in question, has excavated more land than mentioned in the agreement. It is therefore alleged in the First information reports that the Government was put to loss. The initial First Information Reports were lodged on these allegations and offences mentioned supra were registered against the said accused No.1. Thereafter, the prosecution started an investigation wherein it was found that the present applicant, along with other accused, had committed certain offences punishable under Sections 109, 119, 466 and 474 of the Indian Penal Code, and therefore, the name of the applicant, along

with the other co-accused, appeared in the Charge-sheet.

8. As stated supra, both the applications, even though challenged different First Information Reports, the offences alleged are under the same sections, and more or less identical allegations have been made against the applicant. The allegation, as far as the present applicant is concerned, is that he, in collusion with the other co-accused, has forged documents related to the auction and thus caused wrongful loss to the State. Both the said First Information Reports and charge-sheets as mentioned supra are challenged in the present applications.

9. We have heard Shri Mukesh Samarth, learned Senior Counsel along with Shri C.V. Samarth, learned Counsel for the applicant and Shri M.J. Khan, learned Additional Public Prosecutor for the non-applicant/State.

10. Learned Senior Counsel by taking us through the Charge-sheets of the matter submitted that the auction was conducted for the sand ghat in the year 2007–2008, wherein the sand ghat of

Mouza Bina was included. The auctions were held as per the provisions of Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966, which are framed under Mines and Minerals (Development and Regulation) Act, 1957. He submits that in the case of Bina Ghat, the area of the said ghat to be excavated was shown by gat numbers. However, the gat numbers so specified were found to be having some discrepancy, and therefore, the Tahasildar Kamptee vide his letter 20.07.2007 requested to add certain more gat numbers i.e., Nos. 14 to 18, 26, 150, 154/4, and 155 to 159, by way of a communication. Acting on the said letter of the Tahsildar, the Senior Geologist was requested to rectify the discrepancy before the auction.

11. As stated by the learned Senior Counsel that the applicant, who was the Mining Officer at the relevant time, acted as per the instructions of the Resident Deputy Collector, who was holding the charge of the office. Thus, it is the submission of the learned Senior Counsel that the gat numbers were added to the communication at the behest of the Tahasildar, and therefore, he had no role to play regarding the abetment of any offence or to cause any wrongful loss

to the Government intentionally. He further submits that the addition of the adjacent survey number was only for the identification of those survey numbers, which were to be allotted by auction.

12. It is further submitted by the learned Senior Counsel that accordingly auction was held on 26.07.2007, in which the accused No.1, being the successful bidder, was allotted the tender. However, when it was found that the said auction purchaser was extracting more sand without measurement, an offence as stated above was registered against him. It is therefore his last submission that, only because it later came to the knowledge of the prosecution that some additional gat numbers were written by hand in the various correspondences/note-sheets, the applicant has been implicated in the said crime. He therefore submits that neither any overt act is attributed to the applicant nor there is anything incriminating against him, and thus, the applicant had no role to play in the entire episode. He therefore prays for the quashing of the said criminal proceedings.

13. Per Contra, while vehemently opposing the contentions advanced by the learned Senior Counsel, the learned Additional Public Prosecutor submits that the applicant is a Mining Officer, and therefore, it is expected by him to be aware of the procedural aspect and he cannot shrug off his responsibility by stating that it was the Tahasildar who initially added some gat numbers in the land to be put for auction. He submits that being a Mining Officer, it was his duty to get himself satisfied about the wrongful loss, if any, to be caused to the Government, and therefore, could not have proceeded mechanically. He submits that the reason put forth cannot be a reason to absolve the applicant from the present criminal proceeding, and therefore, this would not be a fit case since loss of public money is involved. He therefore prays that the applications are liable to be rejected.

14. In the backdrop of these facts, we have appreciated the controversy involved in the present applications. As can be seen from the applications, the First Information Reports are registered way back on 11.02.2008, and the Charge-sheet is filed even in 2008. When confronted, the learned Additional Public Prosecutor

fairly submits that no departmental enquiry/action has been taken since 2008 till date, against the applicant. It can also be seen from the record that no sanction to prosecute as contemplated under the provisions of the Prevention and Corruption Act has been placed on record, nor any other material has been placed to show that the sanction was in fact obtained or is in the process of being obtained.

15. It is also noteworthy to mention here that it is an admitted position borne out from the record that after the applicant approved additional gat numbers, on the basis of communication of the Tahasildar mentioned supra, the file has moved to the higher authorities till the Collector. Thus, it is not only the applicant who is being singled out for omission, if any. As can be seen from the summary of the Charge-sheet, the Tahasildar Kamptee has communicated that if certain survey numbers as mentioned therein are not included, the possibility of illegal excavation of sand cannot be ruled out. Thus, on the basis of this representation by the Tahasildar, the present applicant approved the said proposal, stating therein that there can be no objection to altering the area of the sand ghat. This act on the part of the applicant, in our view, is not

sufficient to attract the offences as blamed upon him by the Charge-sheet. The only act attributed to the applicant is regarding abetment. For attracting the offence punishable under Section 109 of the Indian Penal Code, a person has to instigate, engage with others in conspiracy, or intentionally aid for doing certain things. Likewise, to attract offence under Section 466 of the Indian Penal Code, forgery is required to be done in various documents as mentioned in the said section. In addition to this, Section 474 of the Indian Penal Code contemplates using the document forged as per Section 466 and knowingly so as a genuine one. All these requirements cannot be borne out from the material in the form of a Charge-sheet filed by the prosecution. Thus, it can be said that the necessary ingredients for attracting the said offences are totally absent. The only overt act attributed to the applicant is regarding he approving the additional gat numbers and therefore indirectly abetted wrongful loss to the Government.

16. However, looking at the overall aspects and the facts stated above, the said material is hopelessly insufficient to make the applicant to face the criminal trial. Thus, continuance of criminal

proceedings against the applicant would be an abuse of the process of the Court, looking at the reasons mentioned supra. We therefore pass the following order.

ORDER

- i) The applications are allowed.
- ii) First Information Report registered vide Crime No 0019/2008 and 24/2008 for the offences punishable under Section 379 read with Section 34 of the Indian Penal Code, and Charge-Sheet Nos. 33/2008, 34/2008, for offences punishable under Sections 379, 466, 474, 119, 109, read with Section 34 of the Indian Penal Code, culminating into Criminal Case No 223/2008 and Criminal Case No 224/2008, are quashed and set aside to the extent of the applicant, Rajendra Basantlal Choudhary.

17. The applications are allowed and disposed of.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..