

IN THE COURT OF CIVIL JUDGE & JMFC

AT AFZALPUR

:Present:

Sri Ashoka .T

B.A., L.L.B.
Civil Judges & J.M.F.C., Afzalpur

CRIMINAL CASE No.175/2018

This the 14th day of November 2019

State through P.S.I. Afzalpur Police Station

(By Learned Asst. Public Prosecutor)

...Complainant

//Versus//

1. Dundamma W/o Syabanna Jamadar
Age:45 years, Occ. President of Mallabad
Gram Panchayat R/o Mallabad.
2. Yallappa S/o Basanna Saradar
Age:48 years, Occ. PDO
R/o Bandarwad, Present R/o Afzalpur
(DEAD)
3. Bashir S/o Mulkasab Jamadar
Age:34 years, Occ. PDO
R/o Mannur village.

4. Nagoji S/o Ramji Kamblekar
Age:57 years, Occ. Assistant Eng.
R/o Venkateshwra Nagar Shahapur.
5. Abufazal S/o Abulkhair Hakeem
Age:47 years, Occ. Husain Gardan
Kalaburgi.
6. Mohammed Rafiq S/o Dongrisab Jamadar
Age:32 years, Occ. Technical Assist Eng.
R/o Madina Colony M.S.K.Mill, Kalaburgi.
7. Raju @ Rajashekhar S/o Beeranna Pujari
Age:32 years, Occ. Computer operator
Mallabad Grampanchayat, R/o Mallabad.
8. Ashok S/o Albanna Babaleshwar
Age:38 years, Occ. Contractor
R/o Matholi village.

(A-1, 3 to 7 By Sri. AAV, Advocate
A-8 by R.H.B., Advocate,
A-2 abated)

...Accused persons

-oOo-

Order on application filed U/Sec.239 of Cr.P.C.

This order arises out of application filed U/Sec.239 of Cr.P.C. for discharge of accused No.5 and 6 for the offences punishable U/Sec.465, 466, 468, 471, 409, 420 R/o 149 of IPC.

2. The accused No.5 and 6 have contended that the complainant is Executive officer, Taluka panchayat Afzalpur, with an allegation that the accused No.1 is president of Gram panchayat Mallabad, accused No.2 and 3 are PDO and accused No.4 and petitioner No.1/Accused No.5 are the assistant engineer and petitioner No.2/Accused No.6 is a Technical Assistant on contracts basis and accused No.7 and 8 are the computer operator on contract basis and that they are allegation of misappropriation of public

money pertaining to the period of 2013-14 in Mnarega scheme pertaining to four villages coming under the jurisdiction of Mallabad Gram Panchayat and that there is misappropriation of Rs.2,19,83,911/-. The petitioners have further urged that they are innocent of the alleged offences and they have been falsely implicated and there is no evidence as against the petitioners and the Chief Executive officer Zilla Panchayat Kalaburagi conducted enquiry and recalled the suspension order against the petitioner No.1 and Deputy Secretary has also conducted enquiry and held that the petitioner No.1 has no role in the said offences and the petitioner No.2 is joined on the contract basis on 10.09.2013 through TDS agency for a period of 4 months and that as per the manpower agency appointment letter mentioned instructions regarding the petitioner No.2 payment of bills

prepared by outsourced civil engineer and bill is to be countersigned by regular PRED section officer. Thus the petitioner No.2 has no rule either in physical verification or financial disbursement and there is no prima-facie material against petitioners, hence the petitioners prayed to allow above application and discharge them.

3. The learned APP has filed objection to the above application contending that there are total 22 village panchayat office coming under Taluka Panchayat, Afzalpur and the accused persons have committed an offences of misappropriation of government money amount of Rs.2,98,00,000/- by creating documents in respect of 20 works for the year 213-14 in Mnarega scheme, pertaining to the Mallabad, Chincholi, Halyal, Matholi villages coming under Mallabad village Panchayat.

4. It is further contending the offences committed by the accused No.7 with other accused prima-facie appears from the order of Chief Executive Officer Zilla Panchayat, Kalaburgi in 20 works of Mallabad, Chincholi, Halyal and Matholi villages coming under the jurisdiction of Mallabad village panchayat for the year 2013-14 and there are prima-facie documents which shows involvement of accused No.7 with other accused in showing duplication of same work and is also liable for the misappropriation of Rs.2,98,00,000/- and accused No.7 without verifying work, has certified the same and there is no sufficient reasons given by the petitioners to discharge them from the offences of this case. Hence APP prayed to dismiss the above application.
5. Heard Learned Counsel for the complainant as well as Learned Counsel for the Accused on both

the application. Perused the material placed on record.

6. Upon hearing arguments and on perusal of material placed on record the following points arise for consideration.

1. Whether application filed by accused No.5 and 6 are deserve to be allowed?

2. What order?

7. My finding to the above points are as under:-

Point No.1: In the Negative.

Point No.2 : As per the final order, for the following :

R E A S O N S

8. **POINT NO.1:** Before adverting into the facts of circumstances of the case, it is work to extract Sec.239 of Cr.P.C. which reads as follows...

"If, upon considering the police report and the documents sent with it under Sec.173 and make

such examination, if any, of the accused as the magistrate thinks necessary and after giving the prosecution 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 reason for doing so". A perusal of above provision of law clearly shows that when there is no grounds after verification of the police report and the documents sent U/Sec.173, then only the accused may be discharged by the court.

9. The police has filed report under Sec.173 of Cr.P.C. The said report reads as follows...

"ಅಫಜಲಪೂರ ಪೋಲಿಸ್ ಠಾಣೆ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಮಲ್ಲಾಬಾದ ಗ್ರಾಮ ಪಂಚಾಯತಿಯಲ್ಲಿ ಈ ದೋಷಾರೋಪಣ ಪತ್ರದ ಅಂಕಣ ನಂ.12 ರಲ್ಲಿ ತೋರಿಸಿದ ಆರೋಪಿ ನಂ.1 ನೇದ್ದವನು ಅಧ್ಯಕ್ಷರಾಗಿ, ಆರೋಪಿ ನಂ.2 ಮತ್ತು 3 ರವರು ಪಂಚಾಯತ ಅಭಿವೃದ್ಧಿ ಅಧಿಕಾರಿಯಾಗಿ, ಆರೋಪಿ ನಂ.4 ಮತ್ತು 5 ರವರು ಕಿರಿಯ ಅಭಿಯಂತರರಾಗಿ, ಆರೋಪಿ ನಂ.6 ರವರು ಗುತ್ತಿಗೆ

ಆಧಾರದಲ್ಲಿ ತಾಂತ್ರಿಕ ಸಹಾಯಕ ಅಭಿಯಂತರರಾಗಿ ಮತ್ತು ಆರೋಪಿ ನಂ.7 ರವರು ಗುತ್ತಿಗೆ ಆಧಾರದಲ್ಲಿ ಕಂಪ್ಯೂಟರ ಆಪರೇಟರಾಗಿ ಕೆಲಸ ನಿರ್ವಹಿಸಿರುತ್ತಾರೆ. ಹಾಗೂ ಆರೋಪಿ ನಂ.8 ರವರು ಗುತ್ತಿಗೆದಾರರಿರುತ್ತಾರೆ. ಸದರಿ ಆರೋಪಿತರು ತಮ್ಮ ಕರ್ತವ್ಯವದ ಅವಧಿಯಲ್ಲಿ 2013-14 ನೇ ಸಾಲಿನಲ್ಲಿ ಮಲ್ಲಾಬಾದ ಗ್ರಾಮ ಪಂಚಾಯತಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ನರೇಗಾ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಮಲ್ಲಾಬಾದ, ಚಿಂಚೋಳಿ, ಮತೋಳಿ, ಹಳ್ಳಾಳ ಗ್ರಾಮಗಳಲ್ಲಿ ಯೋಜನೆಯ ಕಾಮಗಾರಿಗಳ ಬಗ್ಗೆ ಕಾನೂನು ಬಾಹಿರ ನೇಮಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿ ಕಾಮಗಾರಿಗಳನ್ನು ಮಾಡದೆ, ಮಾಡಿದಂತೆ ಸುಳ್ಳು ದಾಖಲಾತಿಗಳನ್ನು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡು ಹಾಗೂ ಒಂದೇ ಕಾಮಗಾರಿಯನ್ನು 2-3 ಸಾರಿ ಮಾಡಿದಂತೆ ತೋರಿಸಿ ದಾಖಲಾತಿಗಳನ್ನು ತಯಾರಿಸಿಕೊಂಡು ಗುತ್ತಿಗೆದಾರನಾದ ಆರೋಪಿ ನಂ.8 ರವರೊಂದಿಗೆ ಕೂಡಿ ಹಣವನ್ನು ಪಡೆದು, ಅಂದರೆ ಕೂಲಿಕಾರರಿಗೆ ಕೆಲಸ ಮಾಡದೆ ಪಾವತಿಸಿದ ಒಟ್ಟು ಹಣ ರೂ.9,99,496/- ಗಳು ಮತ್ತು ಕಾಮಗಾರಿಗಳನ್ನು 2-3 ಸಾರಿ ಮಾಡಿದಂತೆ ತೋರಿಸಿ ಹೆಚ್ಚಿಗೆ ಹಣ ದುರ್ಬಳಕೆ ಮಾಡಿದ ಒಟ್ಟು ಹಣ ರೂ.5,97,648/- ಗಳು ಹೀಗೆ ಒಟ್ಟು 15,97,144/- ಗಳು ಹಾಗೂ ಇತರೆ ಕಾಮಗಾರಿಗಳಿಗೆ ಸರಿಯಾಗಿ ಕೆಲಸ ಮಾಡದೆ ಹೆಚ್ಚಿಗೆ ಹಣ ರೂ.2,03,86,767/- ಗಳು ಹೀಗೆ ಒಟ್ಟು ರೂ.2,19,83,911/- ಗಳನ್ನು ದುರ್ಬಳಕೆ ಮಾಡಿ ಸರ್ಕಾರಕ್ಕೆ ವಂಚನೆ ಮತ್ತು ನಷ್ಟವನ್ನುಂಟು ಮಾಡಿರುತ್ತಾರೆ". A perusal of the above report clearly makes out grounds against the accused.

10. The Accused No.5 & 6 have contended that in the enquiry conducted by the Chief Executive Officer, Zilla Panchayat Kalaburagi has record suspension order and in the enquiry conducted by the Deputy Secretary he has said that the Accused No.5 has no role. The findings given by the Deputy Secretary or The Chief Executive Officer Zilla Panchayat, Kalaburagi cannot be taken into consideration as the provision of Sec.239 of Cr.Pc does not allow the accused to produce any documents.

11. The Accused No.5 & 6 have also furnished decisions rendered in State of UP V/s. Paras Nath Sing, another decision rendered in State of West Bengal V/s. Mohammed Khalid by the Hon"ble Supreme Court and another decision in Crl. Pet. No.100212/15 between the Senior Divisional Engineer V/s the State of Karnataka by the

Hon'ble High court of Karnataka Dharawad Bench, wherein a discussion is held with regard to previous sanction from the government to prosecute the accused. In this case cognizance has already been taken against the accused persons, therefore the said decisions cannot be applied for discharging the accused persons.

12. From the perusal of documents and also statements of the witnesses of this case goes to show prima-facie case against the accused persons.

13. Therefore, viewed from any angle, the application filed by the accused is devoid of merits.

Therefore, I answer Point No.1 in the **Negative**.

14. Point No.2: For foregoing reasons, I pass the following...

ORDER

**Application filed by the
accused No.5 and 6 under Sec.239 of
Cr.P.C. is hereby rejected.**

(Directly dictated to the stenographer transcribed
by him, corrected by me and then pronounced in the open
Court dated this the 14th Day of November 2019)

Civil Judge & JMFC, Afzalpur.

(Vide Separate order)

ORDER

**Application filed by the
accused No.5 and 6 under Sec.239 of
Cr.P.C. is hereby rejected.**

Civil Judge & JMFC, Afzalpur.