



2025 INSC 794

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP (Crl.) No (s). 9857 of 2018)

SHRICHAND RAJARAM
KUKREJA AND ANR.APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA
AND ANR.RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP (Crl.) No (s). 10444 of 2018)

J U D G M E N T

Mehta, J.

1. Heard.
2. Leave granted.

3. The appellants in the above captioned appeals are arraigned as accused in the FIR No. 443 of 2015¹ registered with MIDC Walunj Police Station, Aurangabad for offences punishable under Sections 406, 420, 467, 468, 471 and 34 of the Indian Penal Code, 1860.²

4. Since both the appeals arise out of a common order dated 8th October, 2018, passed by the Division Bench of the High Court of Bombay Appellate Side, at Aurangabad³ dismissing Criminal Application No. 6539 of 2015, filed by the appellants, and Criminal Writ Petition No. 1438 of 2016, filed by Jaywant Mallya (accused No. 6 in impugned-FIR), both have been heard analogously and are being decided together by this common order.

5. The complainant (respondent No. 2 in Criminal Appeal @ SLP (Crl.) No. 9857 of 2018) has filed a counter affidavit. Respondent No. 1-State of Maharashtra has not filed any counter affidavit despite repeated opportunities. However, Mr. Aaditya Aniruddha Pande, learned standing counsel

¹ Hereinafter, referred to as “impugned-FIR”.

² Hereinafter, referred to as “IPC”.

³ Hereinafter, referred to as “High Court”.

appearing for the State of Maharashtra, has filed a copy of a report under Section 173 of Code of Criminal Procedure, 1973⁴ in compliance of an order dated 23rd April, 2025 passed by this Court.

6. Facts in a nutshell, relevant and essential for disposal of the appeals, are noted hereinbelow: -

6.1. Ashok Karbhari Shingare Patil⁵ lodged the impugned-FIR at the MIDC Walunj Police Station, Aurangabad alleging, *inter alia*, that he was a professional Contractor involved in variety of construction works.

6.2 MIDC, Walunj, Aurangabad issued a tender in the year 2009-2010, for construction of a sewerage water filter plant under built, operate and transfer basis (B.O.T.) at Plot No. 02, O.S. 7(P), Maharashtra State Industrial Corporation⁶ with the pre-condition that the selected building company would be required to spend equally for this project. Upon completion of the work by the company under the contract, a sum of Rs. 27,00,000/- was to be passed on per month on B.O.T. basis to the company.

⁴ Hereinafter, referred to as “CrPC”.

⁵ Hereinafter, referred to as “complainant”.

⁶ For short, “MIDC”.

6.3. The tender submitted by Bharat Udyog Limited⁷ (the successful bidder), a company registered with the MIDC, was accepted and the project work was awarded to it for the next 20 years commencing from 25th November, 2021. The possession of the property was transferred to BUL. For undertaking the construction works, BUL assigned a sub-contract to S.W.D. Infrastructure Pvt. Ltd., Belapur, C.B.D., Navi Mumbai⁸ in January, 2012. BUL gave certain orders to SWD Infra on 1st March, 2012 against which a sum of Rs.1,35,62,872/- remained outstanding. SWD Infra further assigned a sub-contract to the complainant's company by name of Sai Group and an agreement was entered into in this regard. The complainant claimed that the payment for the work under the sub-contract of SWD Infra was agreed to be made to the complainant directly, under the instructions given by the Directors of BUL (appellants herein) to SWD Infra.

6.4. As per the complainant, for the work done between 10th October, 2013 to 5th May, 2014, a sum of Rs.5,13,78,485.50/- remained outstanding to be

⁷ Hereinafter, referred to as 'BUL'.

⁸ Hereinafter, referred to as the 'SWD Infra'.

paid to his company (Sai Group) and that he had received only an amount of Rs.3,68,15,612/-. A sum of Rs.2,52,12,801/- was due to be paid to the complainant by BUL. As the payment was not forthcoming, the complainant expressed his inability to carry on further work under the sub-contract. Upon this, the Chairman and Director of the BUL, namely Shrichand Rajaram Kukreja and Suryakant (appellant Nos. 1 and 2 respectively) persuaded him to continue with the project work. The complainant was given an allurement that he was a prime Contractor and hence, the bills pending with SWD Infra should be submitted to them (appellants herein) and in turn, the appellants would directly transfer the payment from their bank account to the complainant's company. On receiving this assurance, the complainant resumed the work spending an amount of Rs.16,74,525/- for the same. He submitted the bills towards work done *via* email to the Project Manager of BUL (accused No. 3 in impugned-FIR) on 12th December, 2014.

6.5. Another bill for a sum of Rs.2,12,59,000/- was raised by the complainant towards the work carried out under the sub-contract but the persons in-charge

of BUL kept on giving false assurances and did not make the requisite payments. Consequently, the complainant was compelled to sell his assets in order to make payment towards the material and labour costs.

6.6. The complainant further claimed that two Engineers, namely, Ganesh Rathod and Chetan Dabhade were working with his concern (Sai Group) but the Project Manager Rajendra Yadav (accused No. 3 in impugned-FIR) and Jaywant Mallya (accused No. 6 in impugned-FIR), who were associated with BUL, submitted false documents to MIDC showing those two engineers to be employed by BUL. These documents bore false/fabricated signatures of Ganesh Rathod and Chetan Dabhade and were submitted at the MIDC office on 12th February, 2015. BUL submitted a false stock statement to the Bank Auditor, Oriental Bank of Commerce in March 2015, falsely posing that the stocks, etc. of the complainant were owned by them.

6.7. The complainant concluded his complaint by alleging that he had worked on the project of STP plant and drainage pipe line at Bajaj Nagar, MIDC as a sub-contractor for BUL but partial payment of

Rs.3,68,00,000/- only against the total work successfully carried out by the complainant was made to him and valid bills to the tune of Rs.3,95,00,000/- and Rs.1,16,00,000/- remained outstanding. BUL had entered into a direct sub-contract with the complainant on 22nd November, 2014 and on the assurance of the former, the complainant undertook the work on their behalf. The accused persons (including the appellants herein) collected the amounts against the work executed by the complainant from MIDC, but they refused to pass on the payment to him despite his entitlement. They submitted false documents claiming to have performed the work whereas it was the complainant who had carried out the said work under the sub-contract. In this manner, the complainant claimed to have been cheated of a total amount of Rs.5,11,69,398/- at the hands of the accused persons. Based on this complaint, the impugned-FIR No. 443 of 2015 came to be registered on 14th October, 2015 and the investigation was commenced.

7. Being aggrieved, the appellants herein filed a quashing petition⁹ under Section 482 of CrPC. On the other hand, Jaywant Mallya (respondent No. 1 in Criminal Appeal @ SLP (Crl.) No. 10444 of 2018) who was arraigned as accused No. 6 in impugned-FIR, preferred a criminal writ petition¹⁰ seeking a direction for fair investigation by an independent agency. As is noted above, the quashing petition and the criminal writ petition came to be rejected by learned High Court *vide* a common order dated 8th October, 2018, which is assailed in present appeals by special leave.

Submissions on behalf of the appellants:

8. Shri K. Parameshwar, learned senior counsel representing the appellants, urged that the entire case as set out in the impugned-FIR does not disclose the necessary ingredients of any offence whatsoever. A dispute which is purely civil in nature has been given the colour of a crime by misusing criminal law and the appellants herein are being harassed and persecuted in this matter. He urged that the bills raised by the appellants under the contract in question were not honoured by the MIDC upon which

⁹ Criminal Application No. 6539 of 2015.

¹⁰ Criminal Writ Petition No. 1438 of 2016.

the appellants resorted to arbitration proceedings and the awards have been passed in their favour.

8.1. He further urged that the accounts of the appellant's Company (BUL) with the Oriental Bank of Commerce have been settled and there is no outstanding due to the bank. Even if the allegations of the complainant are to be accepted as true on their face value, it is manifest that part payment has been made to him for execution of the project work as a sub-contractor of the appellants. Apparently, by filing the impugned-FIR, the complainant has tried to invoke criminal law to seek recovery of dues towards a commercial contract.

8.2. Shri Parmeshwar submitted that during pendency of the instant appeals, the police concluded investigation and chargesheet has been filed against the appellants herein for the offences punishable under Sections 420, 406, 467, 468, 471 and 34 of IPC. Shri Parmeshwar urged that the conclusions drawn in the chargesheet are absolutely vague and unsubstantiated and the Investigating Officer has just toed the line of the complainant without making

any effort to seek proper legal opinion on the aspect of whether the dispute is of civil nature or not.

On these grounds, he urged that *ex-facie*, the invocation of criminal machinery for a dispute purely of civil nature is nothing short of a gross abuse of the process of law and hence, the impugned-FIR and all the proceedings sought to be taken there under including the chargesheet deserve to be quashed.

Submissions on behalf of the respondent:

9. *Per-contra*, learned counsel for the complainant (respondent No. 2 in Criminal Appeal @ SLP (Crl.) No. 9857 of 2018), urged that after the initial period wherein the complainant's work under the sub-contract with SWD Infra came to an end, the appellants induced the complainant to continue with the project work by assigning a direct sub-contract to the complainant's company. As per the terms of the sub-contract, the appellants were to receive payments from the MIDC and thereafter they were obligated to honour the bills submitted by the complainant towards execution of the project work. However, the appellants acted fraudulently and

dishonestly thereby inducing the complainant to spend huge sums of money towards the completion of the project in question. The appellants, thereafter, got encashed the bills of payment directly from the MIDC. Not only this, but the appellants also intentionally misrepresented to the authorities that two Engineers employed by the company of the complainant were their employees and thus, fabricated the record.

On these grounds, he thus, implored the Court to affirm the orders passed by the High Court and dismiss the appeals.

Analysis and Conclusion:

10. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

11. The appellants were awarded the work in question in pursuance of their successful bid following the tender floated by the MIDC for construction of a sewerage water filter plant. Going by the material available on record, it seems that the

appellants may have taken some loans, etc. from the banks, for executing the works under the contract awarded by the MIDC. However, neither the MIDC nor any of the bank/s have raised any grievance against the appellants' company in connection with the contract work. The appellants have affirmatively stated in this Court that there is no pending proceeding of criminal nature by any of the banks or MIDC against them in relation to the subject tender.

12. The High Court, while rejecting the appeal, held that the appellants had failed to carry out various works under other contracts awarded by the MIDC and that they were in default in these works as well.

13. The High Court, in its order, also referred to an action taken against BUL by the Kotak Mahindra Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.¹¹ The High Court also took note of the status report filed by the Investigating Officer with the conclusion that the transaction was in the nature of a civil dispute. However, the High Court

¹¹ Hereinafter, being referred to as 'SARFAESI Act'.

went on to conclude that the company of the appellants had employed peculiar *modus operandi* whereby they obtained work orders from various Government institutions and authorities and took advance amounts in the name of investment for the institution and by using the record of the project, they raised huge loans from the banks and financial institutions. They appointed sub-contractors, but did not pass on the money received by them towards the project to the sub-contractors and most of the work was not completed and the contracts were terminated.

14. Placing reliance on these hypothetical presumptions and assumptions, the High Court concluded that as the loan was raised only on specific projects, the sufferers may be both i.e., the Government institutions and the sub-contractors. It was held that there was a clear possibility that without informing or without taking permission from the local authority or Government Institutions, the properties of the local body may have been mortgaged for raising loan. The High Court further noted that only a few of the questioned transactions were

highlighted by Jaswant Mallya (respondent No. 1 in Criminal Appeal @ SLP (CrI.) No. 10444 of 2018) and that there was a possibility of many more such fraudulent transactions.

15. It was further observed that the quotient of MIDC to the tune of Rs.3,00,00,000/- was collected by the appellants and a loan of more than Rs.11,00,00,000/- was raised on the project but the amount was not passed on to the Sub-Contractor. The High Court further noted that the appellants did not make any investment in the project and money was usurped by the afore-stated *modus operandi* as the subject tender did not provide permission to assign sub-contracts. The appellants deceived not only the sub-contractor, but also the MIDC, being the Government corporation. The High Court, in its conclusion, observed that the State Government needs to mull over the matter and hand over the investigation to some specialized agency like the Economic Wing or CBI to conduct investigation into the contracts in which the company of the appellants was involved.

16. The conclusions of the High Court are *prima facie* based on sheer conjectures regarding the appellants having misused the acquired work orders for taking loan from various financial institutions as well as taking advances from the MIDC. The High Court suspected that the accused appellants may have cheated the financial institutions as well as the MIDC. However, a perusal of the report under Section 173(2) of CrPC placed on record, by learned standing counsel for the respondent-State, presents an entirely different picture. In this report, there is no reference to the accused appellants having misused the contracts/tenders awarded to them for procuring undue gain from any other financial institutions, *viz.*, banks, etc. or from the MIDC itself. The report, under Section 173(2) of CrPC, takes note of the directions given by the High Court. The investigation of the FIR continued for almost ten years but not a shred of evidence has been collected by the Investigating Officer to support or fortify the conclusion of the High Court regarding financial bungling by the appellants other than the disputed transaction with the complainant.

17. Hence, the order passed by the High Court directing extensive investigation regarding the perceived financial misadventures of the appellants is *ex facie* erroneous and illegal and hence, the same cannot be sustained.

18. Coming to the prosecution of the appellants based on the impugned-FIR No. 443 of 2015 lodged by complainant (respondent No. 2 in Criminal Appeal @ SLP (Crl.) No. 9857 of 2018), we find that the allegations levelled therein, even if taken to be true on their face value, do not disclose the necessary ingredients of any offence, what to say of a cognizable offence/s. The allegations, on the face of it, disclose a dispute which is purely civil in nature. The complainant came out with an admitted case in his complaint that he had received a part payment to the tune of Rs. 3,68,15,612/- from the appellants, towards the work which was carried out in furtherance of the sub-contracts awarded initially through the sub-contractor, namely SWD Infra, and thereafter directly to the complainant's company. Apparently thus, the admitted facts as available on record reveal that the complainant's claim is for reimbursement of the remaining amount claimed by

him towards the works executed in furtherance of a contract. The allegations, made in the complaint, present a dispute which is purely commercial and civil in nature. It seems that the complainant has contrived to somehow or the other, involve the police machinery to act as recovery agents on his behalf. The complaint, on the face of record, did not disclose any offence whatsoever and no FIR should have been registered based thereupon.

19. This Court has time and again come down heavily on the attempts of the over-zealous litigants in trying to settle their civil disputes by misusing the police machinery and resorting to criminal proceedings. A gainful reference in this regard may be made to a decision of three-judge bench of this Court in ***Inder Mohan Goswami v. State of Uttaranchal***,¹² which involved a contractual dispute among the parties wherein a part payment had been made to the complainant by the accused. This Court, while exercising jurisdiction under Article 136 of the Constitution of India, quashed the FIR/criminal proceedings.

¹² (2007) 12 SCC 1.

20. It may be noted that so far as the allegation regarding forging the signatures of two Engineers namely, Ganesh Rathod and Chetan Dabhade are concerned, the Investigating Officer has already got comparison of the questioned signatures done through the handwriting expert and the report, thus, received is inconclusive. Hence, *ex facie*, the allegations of forging the signatures of the Engineers, employed by the complainant, are not substantiated from the investigation conducted in the case.

21. In wake of the above discussion, we are of the firm view that allowing the proceedings of the impugned-FIR and the chargesheet filed as a culmination of the investigation, would be nothing short of a gross abuse of process of the Court. The impugned order dated 8th October, 2018, passed by the High Court does not stand to scrutiny and is hereby quashed and set aside.

22. Resultantly, the impugned-FIR No. 443 of 2015 and all proceedings sought to be taken in furtherance thereof including the chargesheet are also quashed.

23. This order will not preclude the Investigating Agency to investigate financial irregularities, if any,

disclosed during the course of investigation of the present FIR.

24. The appeals are allowed accordingly.

25. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
May 14, 2025.