

June, 2022 passed by learned Additional Chief Judicial Magistrate, Ahmednagar.

2. First Information Report came to be lodged as per the directions issued by the Principal Secretary, Tribal Development Department on the basis of Special Audit conducted. Audit Report came to be prepared and was submitted to the Principal Secretary on 11th January, 2010. After going through the said report, the Commissioner, Tribal Development Department was directed to register First Information Report against the Project Officer i.e. Petitioner No. 1 Chandrakant Dagadu Bharmal in Criminal Writ Petition No. 303/2023. As per the said directions, First Information Report was lodged with the allegations that while implementing the schemes for the persons belonging to Adivasi community, misappropriation of the funds is done and said schemes were not implemented properly and effectively. There is allegation about misappropriation of huge funds by showing undeserving beneficiaries etc.

3. Learned counsel for petitioners submits that there was no direction for registration of crime against any other petitioner

except Chandrakant Bharmal. It is submitted that the informant has even issued communication to the Investigating Officer for dropping the names of other accused persons from the said report. It is his contention that the procedure contemplated by Bombay Financial Rules 1959 for prosecuting public servant has not been followed. It is his further submission that before fixing responsibility of any alleged irregularity in the implementation of scheme, audit must be conducted and thereafter an opportunity needs to be given to the concerned employee to explain and thereafter loss caused if any can be recovered from public servant. Without prejudice to this submission, it is argued that the petitioners herein are public servants and that the First Information Report clearly indicates that the offences alleged against them are in performance of their discharge of duty and as such without obtaining sanction under Section 197 of the Code of Criminal Procedure, no offence could have been registered and cognizance thereof could not have been taken by the concerned Court. It is submitted that the application filed by petitioners for discharge ought to have been allowed.

4. To support his submissions, he placed reliance on judgment of Hon'ble Apex Court in case of Rakesh Kumar Mishra vs.

State of Bihar and others, (2006) 1 Supreme Court Cases 557 wherein the Hon'ble Apex Court has dealt with the intention of the Legislature in providing protection to the public servant under Section 197 of the Code of Criminal Procedure. It is submitted that the use of expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. By referring to the judgment in case of D. T. Virupakshappa vs. C. Subhash, (2015) 12 Supreme Court Cases 231, it is submitted that the issue about sanction may arise at any stage of the proceedings and it can arise even at inception. It is held therein that there may be unassailable and unimpeachable circumstances on record which may establish at the outset that the public servant was acting in performance of his official duty and hence entitled for the protection under Section 197 of the Code of Criminal Procedure. Placing reliance on the judgment in case of N. K. Ganguly vs. Central Bureau of Investigation, New Delhi, (2016) 2 Supreme Court Cases 143, it is submitted that the purpose of obtaining previous sanction from the appropriate Government is to protect the public servant from vexatious criminal proceedings. If the offence is allegedly committed

in discharge of official duty, it is imperative that sanction must be obtained.

5. Learned APP opposed the said submissions by claiming that it is immaterial as to whether the Investigating Agency was subsequently called upon to drop the names of the accused, as job of the informant is over after the criminal law is set into motion. According to him, if there is material collected during investigation which indicates involvement of any person in the crime, even addition of accused is permissible and Investigating Officer cannot drop any one from the array of accused at the instance of informant. It is submitted that there are specific allegations against the present petitioners as to failure on their part to follow the procedure and also of creating fabricated documents for the purpose of monetary gains. By relying upon the judgment of the Hon'ble Apex Court in the case of Prakash Singh Badal and another vs. State of Punjab and others, **2007 AIR (SC) 1274**, it is submitted that as held by the Hon'ble Apex Court the offence of cheating or fabrication of documents could never become part of the duty of the public servant and hence sanction is not necessary for that purpose. He also relied upon following judgments :-

- i) K. Satwant Singh vs. State of Punjab
1960 AIR (SC) 266
- ii) Inspector of Police and another vs. Battenapatla Venkata
Ratnam and another
2015 AIR (SC) 2403
- iv) Om Kr. Dhankar vs. State of Haryana and another
2012 AIR (SC) (Supp) 58
- v) Raghunath Anant Govilkar vs. State of Maharashtra and others
2008 AIR (SC) (Supp) 1486

6. To counter said submissions, learned counsel for the petitioners has placed reliance on judgment of the Hon'ble Apex Court in the case of A. Srinivasulu vs. State, **(2023) SCC Online SC 900** wherein in paragraph No. 50 of the judgment it is observed thus :-

“The above contention in our opinion is far-fetched. The observations contained in paragraph No. 50 of the decision in Prakash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act.”

He further submitted that according to him, the explanation provided to Section 197 of Code of Criminal Procedure, prescribes the offences in respect of which no sanction is required in case of a public servant accused of the offences. It is thus his contention that in respect of all the offences not covered thereunder, sanction is mandatory.

7. At the outset, this Court wishes to deal with the last submission made with regard to the explanation to Section 197 of the Code of Criminal Procedure. For the purpose of proper understanding, the said provisions are reproduced as under :-

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation :- For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, section 166-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 370, section 376-D, section 376-DA, section 376-DB or section 509 of the Indian Penal Code.

[\(2\)](#) x x x

[\(3\)](#) x x x

[\(3A\)](#) x x x

[\(3B\)](#) x x x

[\(4\)](#) x x x

8. Perusal of the said provisions clearly indicates that in case of a public servant not removable from his office, except with the sanction of Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with previous sanction of appropriate Government. The explanation is set out for the purpose of removal of doubts to say that, no sanction is required in case of offences punishable under

Sections 166A, 166B, 354, 354A to 354D, 370, 375, 376, 376A to 376DD or Section 509 of Indian Penal Code.

9. The contention of learned counsel for the petitioners is that except for these offences for all other offences prior sanction is required. Such interpretation however, is not permissible in view of language of Section 197(1) of Code of Criminal Procedure. As per the basic/general provision, sanction is required only if any offence has been committed by the public servant while acting or purporting to act in discharge of his official duty. Explanation only provides clarification that in respect of the offences mentioned therein, even if those offences are committed in discharge of official duty or while acting or purporting to act in discharge of official duty, still no sanction is required for prosecuting a public servant. Accepting submissions canvassed on behalf of petitioner, would produce, undesired consequences. It would mean that all offences except in explanation shall require sanction of appropriate Government. Thus, this Court is of considered view that the explanation by itself will not make obtainment of sanction mandatory in respect of other offences in case of a public servant. The criteria which would be relevant for purpose of sanction is as to whether the offence alleged has been

committed while acting or purporting to act in discharge of his official duty and not offence itself. Thus, petitioners would not be entitled to seek discharge solely on the ground that the offences alleged against them are not covered by explanation to Section 197 of Code of Criminal Procedure.

10. Regarding application of sanction to prosecute the public servant, principles which can be enunciated from the survey of judicial pronouncements cited above of Hon'ble Apex Court are summarised as follows :-

(i) The offence of cheating under Section 420 or relatable offence under sections 467, 468, 471, and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or in discharge of official duty. [Prakash Singh Badal and another (supra)]

However, in case of A. Srinivasulu (supra), it is held thus :

“51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Prakash Singh Badal are applied, any act which constitutes an offence under any statute will go

out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.”

(ii) In case of K. Satwant Singh (supra) it is held thus :-

We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singhs case (1)). The Act of cheating or abetment has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide Matajog Dobeys case (2)).

(iii) Offence of fabrication of record or mis-appropriation of public funds cannot be said to have been committed in discharge of his official duties. [Inspector of Police and another (supra)].

(iv) Protection under Section 197 of Code of Criminal Procedure has certain limits and is available only when the alleged act has been done by public servant is reasonably connected with discharge of official duties and is not merely a cloak for doing objectionable act. [Rakesh Kumar Mishra (supra)].

(v) The question of sanction may arise at any stage of proceeding. In case of unimpeachable evidence it may be entertained at inception of proceeding. [D. T. Virupakshappa (supra)].

11. In the backdrop of aforesaid legal position, the allegations against petitioners are required to be considered which include non-maintenance of records of various schemes, preparation of wrong record, failure to make purchase after following tender process, incomplete record, grant of benefits to ineligible persons etc. These acts alleged to have been done by petitioners not only charge them for improper implementation of schemes meant to members of Adiwasi community but also of fabrication of record for monetary benefits therefrom. In the case in hand, it cannot be said that the evidence is unimpeachable to hold that act alleged against them form part of

discharge of their duty. Fabrication of record by including names of undeserving beneficiaries cannot be held to be in connection with discharge of duty. Only after leading evidence it can be said as to whether there is fabrication of record and mis-appropriation of public fund and it has reasonable nexus to the discharge of duties of petitioners.

12. No doubt, as held by Hon'ble Apex Court in number of judgments that at any stage, it is open for the Court to consider said aspect however, in such circumstances, there has to be unassailable and unimpeachable nature of allegations which requires mandatory obtainment of sanction before prosecution. In view of this, atleast at this prima facie stage, it cannot be said that the act of preparation of bogus documents, inclusion of undeserving beneficiaries and creation of wrong record can be said to be part and parcel of discharge of duty of the petitioners as public servants.

13. It is sought to be contended on behalf of petitioners that that except petitioner Bharmal, there is no direction from the Authority to lodge report against any other person. In this regard, communication made by informant to Investigating Officer is relied

upon. So far registration of First Information Report is concerned, its importance is to set law into motion. As rightly pointed out by learned APP, it may not be open for the informant to call upon Investigating Agency to delete name of any person from array of accused if there is material evidence on record to show his involvement in the crime. Thus, according to this Court, any subsequent communication made by informant would not help any petitioner to get discharge.

14. As far as non-compliance of Bombay Financial Rules, 1959 is concerned, said rules deal with receipt and utilisation of grants, handling of cash, maintenance of record, dishonour of cheque, keeping valuables in treasury, responsibilities of cashier, indemnity, period of maintenance of record etc. Rule 53 provides for action if loss is caused to Government and if any irregularity is found in audit report, and loss should be recovered. It also makes provision in respect of office contingencies including theft etc. caused during transportation. All these rules pertain to regulation of finances and to check irregularities in maintaining accounts/cash etc. and by no stretch of imagination non-compliance thereof if any, could become impediment in lodging of report with police in respect of offences

under Indian Penal Code. In the instant case the higher authority being satisfied with existence of case, directed registration of First Information Report and hence the same cannot be interfered with for alleged non-compliance of Financial Rules. In this regard, reference can be made to judgment of Hon'ble Apex Court in case of Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi and others, 2023 SCC OnLine SC 991 wherein it is held thus :

“30. In the circumstances, we are of the view that the High Court has erred in quashing the FIR which was lodged by the appellant. It is correct that the FIR adverted to the audit which was conducted in respect of the affairs of the co-operative society. However, once the criminal law is set into motion, it is the duty of the police to investigate into the alleged offence. This process cannot be interdicted by relying upon the provisions of sub-section (5B) which cast a duty on the auditor to lodge a first information report.”

Though the said judgment pertains to the provisions of Co-operative Societies Act, but ratio laid down therein squarely applies to the present case.

15. In order to seek discharge, the Court has to come to the conclusion after viewing the record that there is no sufficient ground for proceeding against the accused. Herein in this case, both counts i.e. for want of sanction as well as making out case for discharge, petitioners have failed. Both Courts below, therefore, have rightly refused to entertain the plea for discharge of petitioners at this stage. This Court finds no reason or justification to cause interference in impugned orders. Hence, both the petitions stand dismissed.

16. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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