

kps

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.679 OF 2015

Sunil Jaysing Tambe.

..Petitioner

-Versus-

The State of Maharashtra and others.

..Respondents

.....

Mr.Abhijit P Avhad, Advocate for the Petitioner.

Mr.D.R.Korde, AGP, for the Respondent No.1.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd February, 2015

Per Court:

1 The Petitioner was the Investigating Officer in relation to the crime which was decided in Sessions Case No.475/2005 on 28.08.2009. The Petitioner was the Police Inspector of Shikrapur Police Station at the relevant time. It is claimed that he had acted in due discharge of his duties.

2 The Respondent Nos.2 to 5 have sought compensation post their acquittal, by filing Special Civil Suit No.160/2010. The State of Maharashtra is the first Defendant and the Petitioner is the second Defendant in the said suit.

3 An application below Exhibit-52 dated 09.01.2012 has been preferred by the Petitioner, invoking Order 7 Rule 11(a) and 11(d) of the Code of Civil Procedure, praying for the dismissal of the suit as against the Petitioner on account of the Plaintiffs having not obtained due sanction from the State Government under Sections 160 and 161 of the Bombay Police Act.

4 By the impugned order dated 02.01.2013, the said application Exhibit-52 has been rejected.

5 The grievance of the Petitioner is that if a proper sanction under Sections 160 and 161 of the Bombay Police Act is not obtained the suit would be rendered untenable. The Petitioner will have to unnecessarily face the rigours of litigation. Instead, the Trial Court could have dismissed the suit by allowing application Exhibit-52. The Petitioner has also relied upon Section 197 of the Code of Criminal Procedure. It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

6 The learned AGP appearing on behalf of the State opposed the said request. It is contended by him that the Trial Court has protected the interest of the Petitioner holding that the contentions put forth by the

Petitioner in Exhibit-52 have not been rejected outright, but would be considered by the Trial Court at the time of deciding the subject suit. The learned AGP further submits that in the entire application Exhibit-52, besides mentioning Section 197 of the Code of Criminal Procedure and Sections 160 and 161 of the Bombay Police Act, there is no justification set out as to why the Petitioner does not desire to face the litigation.

7 Having considered the submissions of the learned Advocates and having gone through the petition paper book, I do not find that the impugned order could be termed as perverse or erroneous. The recording of evidence has already commenced in the matter. The Petitioner, if at all, was seriously aggrieved by the filing of the Special Civil Suit allegedly without sanction, could have moved such an application with promptitude.

8 Nevertheless, the objections raised by the Petitioner and the contentions put forth in Exhibit-52 would be a matter of proof/ evidence and the said aspect will have to be established. The Trial Court would have to first come to a conclusion that Sections 160 and 161 of the Bombay Police Act and Section 197 of the Code of Criminal Procedure are attracted in this matter. It is in that context that the Trial Court has rightly concluded that these aspects would be considered while deciding the suit.

9 The Petitioner had also challenged the order of the Trial Court by filing Miscellaneous Civil Appeal No.73/2013 which has been dismissed by the judgment of the Appellate Court on 18.08.2014.

10 The Appeal Court has considered the factual matrix and has relied upon the reported judgments to conclude that the claim of the original Plaintiffs is for seeking damages against the Petitioner. The suit will have to be decided by following the procedure laid down. After full fledged trial, the issue raised by the Petitioner can be considered. The Appeal Court has, therefore, concluded that a mixed question of facts and law having been involved in the matter, the request of the Petitioner cannot be entertained.

11 In the light of the above, I do not find that the reasons adduced by the Appellate Court could be termed as perverse or erroneous. As such, the Writ Petition being devoid of merits is, therefore, dismissed. No costs.

(RAVINDRA V. GHUGE, J.)