

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2074 OF 2014

Shri Hari Waman Pawar ... Petitioner
vs.
Shri Balasaheb Dadarao Dharme & Anr. ... Respondents

Mr. Ujwal R. Agandsure, Advocate, for the petitioner.
Mr. Sachin B. Thkorat for respondent No.1.
Mr. D.R.More, APP, for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 7th October, 2015.

PC :

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner happens to be the original complainant in Criminal Case No.58 of 2011, which was registered on the basis of a complaint filed by the petitioner on 19.1.2011.

3. The petitioner had filed the complaint before the learned Judicial Magistrate, First Class, Barshi, alleging herein that in the year

2008-09, he had contested the elections to the Grampanchayat, Surdi. He was a tenant of a shop owned by the Grampanchayat, Surdi. He had paid the rent as well as the tax for the said shop. That respondent No.1, who happens to be a Gramsevak, had issued a "No Dues Certificate". After the elections, the respondent herein had issued a notice for recovery of the tax and rent towards the said shop for an amount of Rs.4,500/-. It was the contention of the petitioner that he had already paid the tax and rent and had received no dues certificate. It appears that for non-payment of the tax and rent, the possession of the shop was taken by the Municipal Council in the year 2010 itself. According to the complainant, despite the fact that the money was given to the Gramsevak, he had not issued receipt and committed an offence punishable under Sections 420, 408, 168, 463 and 504 of Indian Penal Code. The learned Magistrate had called for a report under Section 202 of Cr.P.C. The police had filed the report. After recording the statement of the witness, who happened to be the cousin of the complainant, the officer had also recorded the statement of the accused in the 202 enquiry. The officer was of the opinion that prima

facie case was made out against the accused for the alleged offence. The learned Magistrate by an order dated 16.1.2013 had dismissed the complaint on the ground that there was a difference between recovery of rent and recovery of tax. That no dues certificate was issued only in respect of the tax paid towards the said shop and the notice was issued for recovery of dues towards rent of Grampanchayat shop. According to the learned Magistrate, the complainant had misconstrued the issuance of the no dues certificate in respect of the tax and rent. The learned Magistrate had considered the report under Section 202 of Cr.P.C. And dismissed the complaint.

4. The petitioner herein being aggrieved by the said order, had filed Criminal Revision Application No.36 of 2013 before the Sessions Court at Solapur. The learned Sessions Court had specifically observed that no cognizance of the said complaint could be taken for want of prosecution under Section 197 of Cr.P.C. as the Gramsevak happens to be a public servant. In view of this, the learned Sessions Judge has dismissed the Revision Application.

Hence, this petition.

5. No doubt, the accused-respondent happened to be a public servant. The learned counsel for the respondent rightly submits that the Grampanchayat elections were held in the year 2008. The receipts were issued in the year 2008. Possession of the shop was taken back by the Grampanchayat in the year 2010 since despite issuance of notices for recovery of rent, the complainant had not paid the rent. According to the learned counsel, the complainant was aggrieved by taking back the possession by the Grampanchayat and hence initiated the criminal proceedings against the Gramsevak. It is pertinent to note that the Grampanchayat had taken back possession of the rented shop in the year 2010 and the complaint is filed in January, 2011. Admittedly, there is no plausible explanation for the inordinate delay in initiating criminal proceedings. The complainant has stated in the complaint itself that the complainant had approached the Chief Executive Officer, Zilla Parishad, Solapur and had sought permission to file the criminal complaint against the present

respondent, who happens to be the Gramsevak of Village Surdi. The Chief Executive Officer had refused to grant permission. That according to the learned counsel for the respondent, it could be inferred that the Chief Executive Officer had refused to accord sanction as no prima facie case was made out. The Chief Executive Officer is deemed to have applied his mind to the allegations levelled against the respondent by the complainant.

6. Taking into consideration of all these facts, it can be safely held that both the Courts have rightly dismissed the complaint. The reasons assigned for the dismissal of the complaint are just and reasonable. No interference is warranted. Hence, the Petition being sans merits, stands dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.

