

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

**CRIMINAL WRIT PETITION NO. 125 OF 2014
WITH
CRIMINAL APPLICATION NO. 3858 OF 2016**

Gulabrao Baburao Deokar .. Petitioner

Versus

Police Station, City Police Station, .. Respondents
Jalgaon & Anr.

Mr. M.S. Deshmukh, Advocate for the petitioner.
Mr. M.M. Nerlikar, A.P.P. for respondent/State.
Mr. Nagraj Janardhan Patil, Respondent No.2 in person.

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.
DATED : 18.07.2016**

P.C. :-

1. This petition seeks quashing of Crime No.182 of 2013 registered with City Police Station, Jalgaon, pursuant to directions issued by the learned Chief Judicial Magistrate under section 156(3) of Cr.P.C. Even such direction is challenged in this petition.

2. Respondent No.2 is the original complainant. He alleged that the petitioner who was Minister for State of Dairy Development Department and 114 others committed offence punishable under sections 109, 120-B, 200, 203, 205, 212, 406, 408, 409, 415, 416, 420, 425, 468, 471, 475, 477-A, 503 r/w section 34 of Indian Penal Code. The complainant stated that while the petitioner was working as a Minister for State during 07.11.2009 till 11.06.2013, he committed the offence.

3. The gist of the complaint is that the Government in 1995 took over management of Jalgaon Doodh Sangh, a co-operative society of Jalgaon and handed over its administration to National Dairy Development Board (N.D.D.B.). The Board then managed the business of the Sangh. Respondent No.2-complainant was one of the employees of the Sangh and certain penal action was taken against him. That prompted him to start investigation.

4. During his investigation, he found that there was no proper legal sanction for handing over management of the Sangh to the Board. Whatever happened between the State of Maharashtra and N.D.D. Board, according to the complainant was illegal and while performing duties as Minister for State, the petitioner and other accused abetted such illegalities. According to the complainant,

the act of accused to extend the tenure of N.D.D.B. was illegal and orders of extension are false and fabricated documents. He has made 115 persons as an accused, which includes the persons who served as Minister, Secretary, Commissioner of Dairy Department from the year 1995 onwards.

5. The learned Magistrate upon this private complaint, passed the impugned order under section 156(3) of Cr.P.C. directing Police investigation. Acting upon such directions, Police have registered the offence.

6. In a view the order passed by the Magistrate appears to be passed mechanically and most casual manner. The learned Magistrate ought to have realized that the petitioner did something while performing his official functions as a Minister for State. In other words, he was acting as a public servant. In view of Section 197 of Cr.P.C., if any offence is allegedly committed by him while acting in discharge of his official duty, the Court is not empowered to take cognizance unless sanction for prosecution is granted. No such sanction is so far even sought. Therefore, we are convinced that this complaint at least to the extent of the petitioner deserves to be quashed.

7. Hence, the petition is allowed in terms of prayer clause (A) only to the extent of the petitioner.

8. In view of above, Criminal Application No. 3858 of 2015 filed by the respondent No.2 in the petition observations appears to us frivolous. Accordingly, we dismiss it.

[V.L.ACHLIYA,J.]

[A.V.NIRGUDE,J.]