

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

CRIMINAL APPLICATION NO. 694 OF 2016

Sampatrao Daguji Jadhav,
Age : 69 years, Occu. Retired,
R/o. Safalya, Dr. Ambedkar Nagar,
Nasik-Pune Road, Nasik-422 006.

.. **Applicant**

Versus

1. The State Government,
through the Investigating Officer &
Sub-Divisional Police Officer,
Akkalkuwa Sub-division,
Akkalkuwa, Dist. Nandurbar.
2. Shri. Pandit Rohidas Shirsath,
Age : 55 years, Occu. Service as Executive Engineer,
M.I.D Division (L.S.), Zilla Parishad, Nandurbar, R/o. Plot No. 84,
Gavale Nagar, Near Aakashwani Tower, Deopur, Dhule. .. **Respondents**

.....
Mr Ajay S. Deshpande, Advocate for the applicant
Mr A. V. Deshmukh, APP for respondent/State
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**CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, J.**

DATE OF RESERVING THE ORDER : 09.08.2016.
DATE OF PRONOUNCING THE ORDER : 29.09.2016.

ORDER (PER V. L. ACHLIYA, J.) : -

1. The applicant has preferred this application under Section 482 of the Code of Criminal Procedure seeking quashing of criminal proceeding registered as Special Case No. 3 of 2015 before the Id. Additional Sessions Judge, Shahada,

Dist. Dhule, to the extent of the applicant, on the ground that there is express bar u/s 197 of the Code of Criminal Procedure to take cognizance of offence alleged against applicant and the charge-sheet filed against the applicant makes out no case to proceed against the applicant.

2. It is the case of the applicant that, he joined the Government Service as a Junior Engineer in the year 1972 and retired as Executive Engineer on 31.07.2005 on attaining the age of superannuation. During the period from October 1997 till April 2000, he was posted as Executive Engineer, Minor Irrigation Division (Local Sector), Dhule. Sometime during 1998, the State Government bifurcated the Dhule district and carved out Nandurbar district. The additional charge of the post of Executive Engineer of Minor Irrigation Division (Local Sector), Zilla Parishad, Nandurbar was entrusted to him. In the year 2000, he handed over charge of additional post to the person who was regularly appointed as Executive Engineer, Minor Irrigation Division (Local Sector), Zilla Parishad, Nandurbar. During his tenure, the work of construction of storage tanks at Moramba, Tq. Akkalkuwa, Dist. Nandurbar and Ranzani-II and Ranzani-IV allotted to Labour Societies of which accused Nos. 4 to 6 were Chairman. The storage tank with capacity of 14.57 TCM (1000 Cubic Meter) constructed at Moramba, through which an area of 3.43 hectares (8.5 acres) of land to be irrigated. The estimated cost of said construction was Rs. 1,22,333/-, whereas the actual expenses incurred was Rs. 1,07,643/-.

Similarly, the construction of storage tank at Ranzani-II having storage capacity of 12.63 TCM, through which an area of 2.72 hectares (6.58 acres) of land to be irrigated. The estimated costs of said construction was Rs. 91,565/- whereas, the actual expenses incurred was Rs. 75,518/-. The another work of construction of storage tank was done at Ranzani-IV having storage capacity of 19.74 TCM, through which an area of 4.25 hectares (about 10.5 acres) of land was to be irrigated. The estimated costs of said construction was Rs. 95,565/- whereas, the actual expenses incurred were Rs. 34,989/-. No final bills of construction were sanctioned by him of any of the said three storage tanks and what was sanctioned & amount paid was towards running bills. The normal life of such storage tank is about 15 to 20 years, provided there is a regular maintenance after the construction of tank. Since the Nandurbar district is a hilly area, on account of heavy rains and floods, the possibility of draining out the entire tanks cannot be ruled out. The work was carried out through the agency by inviting tenders and the work was to be supervised by the officer concerned of the Sub-division. As a Executive Engineer, he had a limited role to play in the entire process to be undertaken at the field level. He had personally visited the construction site at Moramba, Ranzani-II and Ranzani-IV on 13.10.1999. After 07.04.2000, the applicant ceased to hold the additional charge of the post of Executive Engineer of Minor Irrigation Division (Local Sector), Nandurbar, as he handed over the charge to one Shri. Ingole, who was then appointed to said post. He retired in the year 2005. Till 15.04.2014, when he

received notice u/s 160 of the Code of Criminal Procedure, he was unaware of the complaint lodged by Shri. Babulal Rupsing Naik. After receipt of the summons, it was revealed to him that one Babulal Rupsing Naik, who claims to be social worker and reporter, made complaint on 21.10.2011 alleging therein the misappropriation of the amount spent on said three projects. He alleged that, without construction of storage tanks, the amount earmarked for the said three projects have been misappropriated. Based upon the report of preliminary enquiry, the respondent No. 2 filed complaint. On the basis of said complaint, the FIR came to be registered vide C.R. No. 80/2014 for committing offence u/s 406, 408, 409, 467, 477-A, 120-B r/w Section 34 of the Indian Penal Code and Sections 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1908 against six persons which includes the applicant/accused No. 3 under the orders of Chief Executive Officer, Zilla Parishad, Nandurbar. After registration of offence, the investigation was conducted & charge-sheet came to be filed in which the applicant is arrayed as accused No. 3. The charge-sheet filed in the court culminated in registering Special Case No. 3 of 2015, which is the subject matter of this application.

3. In nutshell, it is the contention of the applicant that, the institution of such complaint after a period of 15 years and that too without seeking previous sanction u/s 197 of Cr.PC. from the State Government amounts to gross abuse of process of law & liable to be quashed in exercise of powers u/s 482 of Cr.PC..

According to applicant, he has not committed any offence. The charge-sheet filed also not discloses commission of any offence on his part. He has only sanctioned the running bills. The final bills were never prepared & sanctioned during his tenure. He had handed over the additional charge of the post held by him in April-2000 to his successor. As per PW manual, upon reliving a Government Servant, the Relieving Officer is obliged to bring to the notice of his superior any deficiency or defects in work or stores taken over from his predecessor, within three months. Failure to do so renders him responsible both as to quantity and quality. No such deficiency was ever brought to the notice of the superior officer by his successor. After lapse of 15 years, the applicant is not expected to establish that the construction work at said sites was undertaken. Ten years after the retirement, it is difficult for any Government servant to establish that he had got any particular work executed or at least had commenced substantially. It is further case of the applicant that, in the communication i.e. the show-cause notice dt. 05.11.2011 issued by the Executive Engineer to Deputy Engineer, MI Sub-Division, Dhadgaon under Zilla Parishad, Nandurbar, makes it clear that the work at all the three places referred were shown as incomplete which establishes the fact that the entire case against the applicant is false as per the record of the Department. The communication made by the Executive Engineer itself reflects that the work was carried out but it was found incomplete. In nutshell it is the say of applicant that, the alleged act of approval of bills & forwarding the same to Finance Department of Zilla Parishad being done in

discharge of his official duty, the Court can not take cognizance of such offence, wherein such public servant is made accused, unless the prior sanction as contemplated u/s 197 of the Cr.P.C. is obtained to prosecute such applicant.

4. Mr. Deshpande, the learned counsel for the applicant has restricted his argument in the instant petition to the extent that criminal proceeding instituted against the applicant is not maintainable for want of requisite previous sanction u/s 197 of the Code of Criminal Procedure & quashing of proceeding in exercise of power u/s 482 of Cr.P.C. He has submitted that, applicant has separately challenged the order rejecting the application for discharge vide Criminal Application No. 5560 of 2015 and challenge raised in the instant petition restricts to maintainability of petition for want of requisite sanction. By referring the allegations made in the charge-sheet filed against the applicant, it is pointed out that, the acts alleged against the applicant are very much related with the discharge of his official duty as Executive Engineer. He has pointed out that overall the allegations made against the applicant are that, as a Executive Engineer before forwarding the bills for sanction to Finance Department, he should have inspected at least 5% of the work. It is stated in the charge-sheet that the accused No. 1 i.e. Jr. Engineer, was to supervise the work of storage tank and to make the entries in the measurement book. He has prepared the bogus bills joining hands with accused Nos. 4, 5 and 6, the chairman of the Labour Society and forwarded these bills to accused No. 2.

Accused No. 2 i.e. Dy. Engineer, who received those bills without physically verifying the work, forwarded those bills to applicant/accused No. 3. The applicant/accused No. 3 without physically verifying as to whether work was carried out or not, has forwarded said bills for approval and payment to Finance Department. In this background, it is submitted that, if we take the allegations made against the applicant in its entirety to be true and correct, still it makes out no case to prosecute the applicant. If we accept the case of prosecution as it is, then at the most, it can be said that the applicant has failed to properly exercise his administrative & supervisory powers as a Executive Engineer over his subordinates. Nowhere it is alleged that the applicant was personally involved in fabrication or creation of false record. It is contended that, sanctioning of the bills received from subordinate was very much within the discharge of official duty of the applicant. It is, therefore, submitted that, the institution of the prosecution against the applicant without prior sanction is not maintainable in law and Section 197 of the Code of Criminal Procedure operates as a bar from taking cognizance of such cognizance. In support of the submissions advanced, the learned counsel has relied upon the decisions of the Hon'ble Apex Court in the cases of State of Punjab Versus Labh Singh reported in 2014(16) SCC 807, G. Sagar Suri And Another Versus State of U.P. And Others reported in (2000) 2 SCC 636 and Bajinath Jha v. Sita Ram & Anr. reported in 2008 AIR SCW 4614.

5. On the other hand, the learned APP representing the State has submitted that, the nature of offence charged against the applicant do not require sanction u/s 197 of the Code of Criminal procedure. He has submitted that, the acts alleged against the applicant reflects that he has committed the acts like forgery, cheating, breach of trust and misappropriation, which do not require any sanction as contemplated u/s 197 of the Cr.P.C. In support of this submission, the learned APP has referred and relied the decision of Apex Court in the case of Punjab State Warehousing Corp. v. Bhushan Chander and another reported in AIR 2016 SC 3014.

6. In order to appreciate the submissions advanced, we have perused the charge-sheet filed against the applicant. The FIR lodged against the applicant reflects that, pursuant to the complaint made in the year 2012 by one Babulal Naik, the Lokayukta called report from Executive Engineer Nandurbar, which leads to conduct of inquiry. In the inquiry conducted, it was transpired that the bills were paid to accused Nos. 4 to 6 i.e. the Chairman of the Society, without the work carried out by them and that too by preparing false record of construction of storage tanks at said places. The allegations attributed against the applicant are that, as a Executive Engineer, the applicant should have verified at least 5% of the work before forwarding the bills for approval and payment to Finance Department of the Zilla

Parishad. The allegations about preparation of bogus bills and bogus entries in the measurement book are solely attributed to the accused No. 1. There are no allegations that the applicant has personally made any act of forgery and fabrication of record to help accused Nos. 4 to 6 to withdraw the amount. Although it is alleged that the accused Nos. 1 to 6 had hatched a conspiracy to prepare false and bogus bills without the work being carried out and misappropriated the public money but, there is no such evidence as against the applicant. It was very much within the official duty of the applicant to have dealt with such bills and to forward the same to Finance Department. It is nowhere case against the applicant that he prepared any false record. Only role attributed to the applicant is to forward the bills to the Finance Department without verifying the work to the extent of 5%. Thus, in our view, acts alleged to have committed by the applicant are very much related to the performance and discharge of his official duty and, therefore, the protection u/s 197 of the Code of Criminal Procedure is available to the applicant. The protection u/s 197 is available to public servant in service as well as retired. Therefore, the proceeding to the extent of applicant so far it relates to offences under the IPC, the trial Court could not have taken cognizance of these offences without previous sanction from the State Government. There is no dispute as to the legal proposition that the protection u/s 197 of Cr.P.C. is available to retired Government Servant. In this context, the learned counsel for the applicant has rightly placed reliance upon the decision of the Hon'ble supreme Court in the case of State of Punjab v/s Labh

Singh (cited supra) wherein the Apex Court has observed that, the protection u/s 197 of Cr.P.C. is available to public servant even after retirement.

7. Mr. Nerlikar, learned APP for the State has referred and relied upon the decision of the Apex Court in the case of Punjab State Warehousing Corp. v. Bhushan Chander and another reported in AIR 2016 SC 3014 in support of the submissions that as the offences registered against the applicant pertains to acts of cheating, forgery, fabrication of record and misappropriation of amount same cannot be treated as acts committed in discharge of official duty to claim protection u/s 197 of Cr.P.C. He has submitted that the protection u/s 197 of Cr.P.C. restricts to only those acts or omission or commission which are done by public servant in discharge of official duty or the act committed was under the colour of the office held by the official. So far as the proposition as canvassed the law is quite settled on this issue. In the case cited, the Apex Court has considered the precedents of law on this issue and gist of the same has been referred in para 22 which reads as under: -

22. *A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the acts omission or commission is totally alien to the discharge of the official duty, question of invoking [Section 197](#) CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha's (supra). The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service.*

*Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under [Sections 467, 468 and 471](#) IPC may be of such nature that obtaining of sanction under [Section 197](#) CrPC is not necessary but when the said offences are interlinked with an offence under [Section 409](#) IPC sanction under [Section 197](#) for launching the prosecution for the offence under [Section 409](#) is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in *B. Saha (supra)* has distinguished in *Shreekantiah Ramayya Munipalli (supra)* keeping in view the facts of the case. It had also treated the ratio in *Amrik Singh (supra)* to be confined to its own peculiar facts. The test to be applied, as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in *Matajog Dube (supra)* which we have reproduced hereinbefore. The three-Judge Bench in *B. Saha (supra)* applied the test laid down in *Gill's case* wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.*

8. Thus, the applicability of Section 197 of Cr.PC. depends upon the facts of the each case and no hard and fast rule can be laid down in that behalf. The very object of Section 197(1) of Cr.PC. is to provide protection to public servant while in service as well as after retirement from vexatious and frivolous proceedings. Therefore, the facts of the each case would determine as to whether protection u/s 197 would be available or not to such public servant. In the instant case, the applicant who has retired from the service in the year 2005 has been subjected to face prosecution launched in the year 2015 i.e. after 10 years of retirement that too in respect of acts alleged to have been committed in the year 1999 i.e. after more than

15 years from act complained. Therefore, it is incumbent to examine the facts of the present case to determine as to whether in light of the allegations made against the applicant it was necessary for the prosecution to have obtained sanction u/s 197 of the Cr.P.C. We have discussed in foregoing para that, only act attributed to the applicant is that he has not inspected the site before forwarding the bills for sanction and payment to Finance Department of Zilla Parishad. It is the case of the prosecution that, the applicant, who was working in the capacity as Executive Engineer, should have verified at least 5% of the work. Thus, on the face of the allegations made in the charge-sheet against the applicant at the most make out a case of lack of proper exercise of administrative and supervisory powers by the applicant over his subordinate authority. It was very much within the scope of the duty of the applicant as a Executive Engineer to entertain such bill and process the same. In this view, the role played by the applicant was very much connected with the discharge of the official duty by the applicant as Executive Engineer and cannot be said to be an act outside the purview of his duty or not connected in any way with the office of the applicant. It is the case of the prosecution that, accused No. 1 made wrong noting in the measurement book and forwarded the number of bills for payment to accused Nos. 4 to 6. The role attributed to applicant No. 3 is that, the work referred in the bill has been actually carried out or not on site, has not been verified. Only for the reason that the applicant has not visited the site and personally verified the work, no allegations can be attributed that the applicant has acted hand

in glove with the accused Nos. 1, 2 and 4 to 6. Even the case of the prosecution against the applicant is based upon surmises having no foundation in the form of evidence placed on record. The correspondence find place in charge-sheet reflect that the respondent No. 2 was not instructed nor authorized to file complaint against the applicant. The fact to this effect reflects from letter dt. 30.04.2015 written by CEO, ZP, Nandurbar and addressed to Executive Engineer (Minor Irrigation). Perusal of said letter reflects that, direction to file complaint against the accused Nos. 1 and 2 is based upon the communication in the form of direction received from the office of Lokayukta vide letter dt. 16.05.2014 pursuant to complaint lodged by Babulal Naik to Lokayukta and the report of inquiry submitted in that behalf. The contents of letter dt. 30.04.2015 reflect that there was direction from the office of Lokayukta to lodge criminal prosecution against Shri. S. G. Pawar, Junior Engineer (accused No. 1) and Shri. S. C. Girase (Sectional Engineer). The respondent No. 2 was authorized by CEO, ZP, Nandurbar to file police complaint against the said two officers. Perusal of the order passed by the CEO discloses that respondent no. 2 has exceeded his authority given and filed complaint against the applicant/accused No.3. If the Lokayukta has found said two persons alone responsible for the act of misappropriation based upon the outcome of the inquiry conducted in the matter then it is surprising that the respondent No. 2 filed complaint against the applicant/accused No. 3 pretending as if there is a direction from the Lokayukta to lodge the complaint against the applicant. He has also falsely pretended that he has

been ordered by the CEO to file complaint against the applicant/accused No. 3. In this view the possibility of applicant/accused No. 3 being framed and implicated in the case on the basis of *inter se* rivalry in the department cannot be ruled out.

9. In this view, it was necessary that previous sanction ought to have been obtained before filing charge-sheet against the applicant/accused No. 3. It is also pertinent to note that, though the offence u/s 13(1)(d) & 13(2) of the Prevention of Corruption Act, has been registered and the applicants have been charge-sheeted, there is no iota of evidence to attract any of such offences alleged against the applicant.

10. In the light of the discussion made in the foregoing paras, we are of the view that it is fit case wherein the inherent powers under Section 482 of the Code of Criminal Procedure deserves to be exercised to prevent abuse of process of Court and further to prevent the applicant being subjected to further humiliation, harassment to face rigorous of criminal prosecution after the period of 10 years of retirement.

11. We are therefore inclined to allow the application in terms of prayer clause 'B' of the application to the extent of the applicant/accused

No.3 and same is accordingly allowed. The trial Court may proceed against the other accused. Rule made absolute in above terms.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE