

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

CRIMINAL WRIT PETITION NO. 125 OF 2007

Uttam Daulat Baviskar,
age 48 yrs, Occ. Service,
R/o Ordinance Factory Estate,
Bhusawal, Jalgaon, Dist. Jalgaon.

Petitioner/
Orig complainant.

VERSUS

1. Amitabh Roy Choudhary,
age 51 yrs, Occ. Service,
R/o Estate Officer, Ordinance
Factory, Bhusawal, Dist. Jalgaon.

2. The State of Maharashtra. Respondents.

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Advocate for Petitioner : Mr K.B.Jadhav h/f A D Shinde

Advocate for Respondent 1 : Mr S.V.Hange h/f Mr.

R.N.Dhorde

APP for Respondent No.2: Mr S P Tiwari

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CORAM : V.K. JADHAV, J.

Dated: November 18, 2016

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ORAL JUDGMENT :-

1. By way of this writ petition, the petitioner seeks quashing and setting aside of the judgment and order dated 8.12.2006 passed by the learned Adhoc Additional Sessions Judge, Jalgaon in Criminal Revision No.368/2005.

2. Brief facts, giving rise to the present writ petition are as under :-

The petitioner had filed a private complaint against respondent no.1 for having committed the offence punishable under Sections 448, 379, 427 of Indian Penal Code and Section 3(1)(x) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as "the Atrocities Act") . It has alleged in the complaint that, the petitioner has been working in the Ordinance Factory, Bhusawal since last 25 years and he has been allotted one Government residential Quarter by the employer and he was residing in the said quarter. It has further contended in the complaint that, petitioner belongs to 'Mahar' Scheduled Caste and due to his caste respondent no.1 used to behave with him in a rude and bad manner. Even, he had managed to cancel the allotment of the quarter to the petitioner. It has further alleged in the complaint that, on 1.8.2005 when the petitioner was on duty respondent no.1 got vacated quarter without giving any intimation to him. Even during the course of the said eviction, respondent no.1

had abused the petitioner on his caste basis and further insulted the feelings of petitioner by throwing photo frame of Dr. Babasaheb Ambedkar on the ground. The petitioner has, therefore, approached City Police Station, Bhusawal and lodged the complaint, however, police did not take any action and, therefore, he has filed complaint in the court.

3. Learned Magistrate after taking verification and on perusal of the documents issued process against respondent no.1 for the offence p/u/s 3 (1) x) of the Atrocities Act. So far as other offences are concerned, as alleged in the complaint the Magistrate has declined to issue process under the said offence.

4. Being aggrieved by the same, respondent no.1 preferred a Criminal Revision Application no.368/2005 before the Sessions Court, Jalgaon and the learned Adhoc Additional Sessions Judge, Jalgaon by its impugned judgment and order dated 12.12.2006 quashed and set aside the order dated 9.12.2005 passed by the J.M.F.C. Bhusawal in RCC No. 362/2005

thereby issuing process under section 3 (1) (x) of the the Atrocities Act and further dismissed the complaint. Being aggrieved by the same, original complainant preferred this criminal application.

5. Learned counsel for the petitioner submits that, petitioner was being harassed solely on the ground that he belonged to the scheduled caste by respondent no.1. Learned counsel submits that, in order to get the quarter vacated, respondent no.1 has used the force. In fact, on 24.6.2005 the petitioner has submitted his explanation in respect of vacating said quarter and inspite of the said explanation, respondent no.1 has proposed and implemented such action of eviction of the quarter. Learned counsel submits that, during the process of said vacating of the quarter, respondent no.1 has abused petitioner on his caste and further hurt his feelings by throwing on ground photo frame of Hon'ble Dr. Babasaheb Ambedkar. Learned counsel submits that, even though, petitioner had approached police station, however, no cognizance was taken and therefore, petitioner constrained to file a complaint

before the Court. Said incident was also witnessed by one S.K.Mehata and one S.J.Godhwani. Learned counsel submits that, respondent no.1 has committed an offence punishable under the Atrocities Act for which sanction u/s 197 of the Cr.P.C. is not required. Learned counsel submits that, abusing the petitioner on his caste basis cannot be a part of official duties of respondent no.1 and, thus, no sanction is required as provided under section 197 of the Cr.P.C. Learned counsel submits that, even the petitioner has challenged eviction proceeding before the District Court and the the District Court has allowed the appeal of the petitioner. Learned counsel submits that revisional court has considered the probable defence available to respondent no.1-original accused and thus, wrongly allowed the revision petition and dismissed the complaint.

6. Learned counsel for respondent no.1-original accused submits that, quarter of the present petitioner is in the premises of residential estate of the Ordinance Factory, Bhusawal which is a Government of India defence unit. Petitioner was not residing in the said

residential quarter as he had built his own house. There were some complaints that quarter was given to some one else by subletting it. There was a pending seniority list of some employees of Ordinance Factory awaiting for allotment of the Government Quarter. In view of that, a necessary preliminary inquiry was conducted and it was found that, present petitioner was not residing in the said quarter but his nephew and his family members were residing there as unauthorized occupants. Thus, after examining the facts, General Manager, Ordinance Factory, Bhusawal transferred the case to respondent no.1, who happened to be an Estate Officer for initiation of eviction proceeding of unauthorized occupant as per the provisions of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as 'the said act'). Thus, respondent no.1 has issued notices to petitioner under the provisions of the said Act. Learned counsel submits that, in view of the provisions of Section 8 of the said Act, respondent no.1 being Estate Officer is holding a quasi judicial post, the action taken by him in accordance with the provisions of Section 5 of the said

Act is in discharge of his official duties. Learned counsel submits that, in view of the same, respondent no.1 is protected by the provisions of Section 197 of the Cr.P.C. and Magistrate should not have taken cognizance of the complaint as complaint suffered from a fundamental defect of requirement of sanction. Learned counsel submits that, further respondent no.1 by way of performing his duties as Estate officer is empowered by the provisions of law to record evidence and pass an order of eviction and, therefore, respondent no.1 is also protected by The Judges (Protection) Act, 1985. Learned counsel further submits that, respondent no.1 has maintained proceedings of eviction and even panchnama was also drawn in presence of police for evicting unauthorized occupant of the said government quarter.

7. Learned counsel submits that, petitioner has cited name of one S.J. Godhwani as witness who happened to be a Chairman of the Ordinance Factory Employees Co-operative Credit Society, Bhusawal. Said witness Godhwani is a ward-boy in the hospital run by the

Ordinance Factory, Bhusawal, and there were several complaints by the staff against him. Thus, after making necessary preliminary inquiry, department has issued several charge sheets against him for the misconduct which include serious charges. Even respondent no.1 has issued two charge sheets on 20.7.2005 and 5.8.2005 under the provisions of Central Civil Service Classification Control Rules (CCS) (CCA) as per decision taken by the disciplinary Authority. Even said witness had approached the Industrial Court, however, his petition came to be dismissed as not maintainable. Thus, in order to pressurize the Management and since respondent no.1 was also holding post of Additional General Manager (Administration) petitioner under the guidance of said Godhwani filed a false complaint. Learned counsel submits that, petitioner made allegations against respondent no.1 and act complained of is the part of discharging of the official duties and sanction as provided under section 197 of Cr.P.C. is therefore required. Learned counsel submits that, petitioner has lodged complaint in the police station and in the preliminary inquiry conducted by the police, it

was revealed that, complaint was false. It has specifically mentioned in the said report that, police force was present when eviction proceedings were initiated and, no such incident happened as alleged in the complaint. Learned counsel submits that, petitioner has suppressed these material facts and filed false complaint against respondent no.1 by making wild allegations.

8. Learned counsel for respondent no.1 in order to substantiate his contention placed his reliance on the following cases :-

1. *Gauri Shankar Prasad Vs. State of Bihar and another reported in reported in 2000 ALL MR 1691 (S.C.).*

2. *Abdul Wahab Ansari Vs. State of Bihar and another reported in 2001 ALL MR (Cri) 183 (S.C.)*

3. *Pepsi Foods Limited and another Vs. Special Judicial Magistrate 1998 (1) Mh.L.J. 599 and*

4. *D.T. Virupakshappa Vs. C. Subash Criminal appeal No. 722 of 2015, delivered on 27.04.2015 by Supreme Court.*

9. I have also heard the learned APP for the Respondent State.

10. It is not disputed that the petitioner was employee of the Ordinance Factory and he was residing in a Government Quarter allotted to him. Further, the petitioner-original complainant has not denied that he has built his own house. In his complaint the petitioner has stated that some of members of his family residing in a Flat in Golani Complex. It is also not disputed by the learned counsel for the petitioner that, on 2.7.2005 a notice of eviction under section 4 of the said Act, was issued by respondent no.1 to the petitioner and on 5.7.2005 personal hearing was given to the petitioner in the office of respondent no1- Estate Officer wherein time of 7 days was granted to the petitioner at his request. However till 13.7.2005 petitioner did not vacate the same, and, therefore, notice u/s 5 of the said Act was issued to him. On 1.8.2005 in view of the notice u/s 5 as aforesaid, the petitioner was evicted from the Government quarter by drawing a necessary panchnama and material was kept under the safe

custody. Copy of the panchnama is also placed on record and the same is not disputed. It is a matter of record that, even said panchnama was also signed by the police staff present there to facilitate eviction of the petitioner from the Government quarter.

11. Respondent no.1 was working as Estate officer and he had initiated said proceeding as directed to him by the General Manager. As per the provisions of section 3 of the said Act, Central Government by notification in official gazette make appointment of Estate Officer for the purposes of said Act. Section 3 of the Act of 1971 reads as under :-

Section 3 of Act of 1971 :-

Appointment of Estate officers.—The Central Government may, by notification in the Official Gazette,

(a) appoint such persons, being gazetted officers of Government ⁸ [or of the Government of any Union Territory] or officers of equivalent rank of the 2[statutory authority], as it thinks fit, to be estate officers for the purposes of this Act:

[Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha: Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority; and]

(b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act.

12. Further as per provisions of section 8 of the said Act, an Estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :-

- a] Summoning and enforcing the attendance of any person and examining him on oath ;
- b] requiring the discovery and production of documents'
- c] any other matter which may be prescribed.

13. In terms of the provisions of section 5 of the said Act, eviction of an unauthorized occupant can be carried out. Section 5 of the Act of 1971 reads as under :-

Eviction of unauthorized occupants.—

- (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and 1[any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorized occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified

in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

- (2) If any person refuses or fails to comply with the order of eviction 1[on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorized by the estate officer in this behalf 1[may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

14. In view of sub section (2) of Section 5 of the said Act, if any person refuses or fails to comply with the order of eviction before the date specified in the order or within 15 days of the date of its publication under sub-section (1), whichever is later, the Estate officer evict that person from and take possession of the public premises and may, for that purpose use such force as may be necessary.

15. It is a part of record that respondent no.1 after following due procedure evicted said government quarter occupied by unauthorized persons in the presence of police staff and also drawn panchnama to that effect. Petitioner-original complainant after lodging complaint

in the police station approached the court by filing private complaint.

16. It is a part of record that before filing of the complaint in the Court, concerned police station has carried out preliminary inquiry and submitted a report to the superior officer that allegations made by the petitioner in the complaint are false and that, no such incident had taken place as alleged in the complaint. It appears that petitioner has not brought this fact to the notice of the Magistrate. On the other hand, petitioner has suppressed this material evidence.

17. On careful perusal of the panchnama, I find that panchnama is signed by staff members of Ordinance Factory as well as police staff including respondent. Further, the material also kept under the safe custody. It is also a part of record that petitioner was not residing in the said quarter and his one of the relatives was unauthorizedly occupying said Government Quarter.

18. In a case Gauri Shankar Prasad (supra) relied

upon by learned counsel for respondent no.1, in paragraph no.14 the Supreme Court has made following observations :-

14.Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub- Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under [Section 197](#) Cr.P.C. Therefore, the High Court erred in holding that [Section 197](#) Cr.P.C. is not applicable in the case.

19. In a case Abdul Wahab (supra) relied upon by the learned counsel for respondent no.1 *wherein the Supreme Court has observed that previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that, accused should wait for taking such plea till the charges are framed.*

20. In **Pepsi Foods Ltd. Vs. Special Judicial Magistrate (1998) 5 SCC 749**, in paragraph no.28 of the judgment, the Supreme Court has made the following observations:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator

at the time of recording of preliminary evidence before summoning of the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

21. In the instant case, material brought on record and admitted facts unequivocally indicates that there is a reasonable nexus in the act complained and official duties to be performed by respondent no.1. Respondent no.1 was directed to get the Government Quarter vacated which was occupied by unauthorized person by following procedure as laid down in the said Act. Thus, the offence alleged is related to the matter with discharge of the official duties of the respondent no.1-original accused. The Supreme Court in case of Pepsi Food Limited (supra) has observed that summoning of

accused in criminal case is serious matter and criminal law cannot be set into motion as matter of course. In the case in hand, the petitioner has approached the court with two witnesses and insisting the court to ignore record available with authorities and issue process against respondent no. 1-accused for having committed a serious offence as alleged in the complaint.

22. In the case of **D.T. Virupakshappa Vs. C. Subash**, (supra) relied upon by learned counsel for the respondent no.1, the Supreme Court in para 6 of the said order has referred the case of **Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another** and quoted paragraph 41 of the said judgment.

Paragraph no.41 read as under:-

41. *The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public*

servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ..."

23. The Supreme Court in the aforesaid case has observed that, there may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of Cr.P.C. The Supreme Court has further observed that, it is not possible for the Court to hold that in such a case, the Court cannot look into any documents produced by the accused or the public servant concerned at the inception. Thus the learned Additional Sessions Judge has rightly considered the documents which are not disputed by the petitioner produced before him during the course of hearing of the criminal revision.

24. In light of the provisions of Section 197 of the Code of Criminal Procedure, respondent no.1 was rightly protected by the revisional court and, accordingly

dismissed the complaint. Even in terms of the provisions of The Judges (Protection) Act, 1985 a judge means not only every person who is officially designated as a Judge but also every person – who is empowered by law to give in any legal proceeding a definitive judgment.

25. In the instant case, respondent no.1 has passed the order after conclusion of the inquiry directing eviction of the petitioner and failing therein issued notice to the petitioner as provided under section 5 of the said Act. In view of the provisions of section 197 of the Criminal Procedure Code, respondent no.1 also need to be protected.

26. In view of the above discussion, and ratio laid down by the Hon'ble Supreme Court in the cases as referred above, I do not find any substance in the writ petition. Writ Petition is devoid of any merits and the same is liable to be dismissed. Hence, following order.

ORDER

- I. Criminal Writ Petition is hereby dismissed.
- II. Rule discharged.

III. Criminal Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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