

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 288 OF 2005

1. Sayanna s/o Sayanna Shengulwar
Age 50 years, Occ. The president
of the Kundalwadi, Municipal Council
R/o. Kundalwadi, Tq. Biloli,
District Nanded
 2. Amol s/p Prabhakar Bagul,
Age 32 years, Occ. Service
The Chief Officer of the Kundalwadi
Municipal Council, Kundalwadi
Tq. Biloli, District Nanded
- ...Petitioners

versus

1. The State of Maharashtra
(Copy to be served on the Public
prosecutor, High Court of Mumbai
Bench at Aurangabad)
 2. The Police Station, Kundalwadi
Through its Police Inspector
Kundalwadi, Tq. Biloli,
District Nanded
 3. Rashid Khan s/o Ahmedkhan
Age 66 years, Occ. Agriculture
R/o. Kundalwadi, Tq. Biloli
District Nanded
- ...Respondents

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Advocate for Petitioner : Mr. A G Godhamgaonkar
APP for Respondents 1 and 2: Ms. R.P. Gour
Advocate for Respondent No.3 : Mr. K M Nagarkar

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CORAM : V. K. JADHAV, J.
DATED : 20th AUGUST, 2016

ORAL JUDGMENT:-

1. Heard.

2. The petitioners are challenging the order passed by the learned J.M.F.C. Biloli in S.C.C. No. 159 of 2005, initially directing the petitioners to show cause as to why process should not be issued against them for having committed an offence punishable under sections 166, 447, 506 r.w. 34 of I.P.C. and further passing an order dated 17.2.2006 below Exhibit in S.C.C. No. 159 of 2005 directing issuance of process against them for the offence punishable under section 166 r.w. 34 of I.P.C.

3. Brief facts, giving rise to the present writ petition are as follows:-

Respondent No.3 original complainant has filed complaint before the Magistrate contending therein that he is owner in possession of land survey No. 6/1 situated at village Kundalwadi since more than 30 years. However, present petitioner No.1, who was the President and petitioner No.2, who was Chief Officer, at the relevant time, of the Kundalwadi Municipal Council, threatened him to dispossess and therefore, respondent No.3 constrained to institute R.C.S. No. 14 of 2005 before the learned C.J.J.D. Biloli against petitioner No.2 Chief Officer for the relief of perpetual injunction. Respondent No.3 has also filed an application Exh.5 for issuance of

the order of temporary injunction. However, the Civil Court has directed the parties to maintain status quo by order dated 4.4.2005. It has further alleged in the complaint that at the instigation of petitioners, their contractors entered into the said land, which is subject matter of civil Suit, on 25.4.2005 and carried out digging operation in the said land.

b) After registration of aforesaid case, learned Magistrate has issued show cause notice to the petitioners as to why process should not be issued against them, as prayed in the complaint. Thereafter, learned Magistrate after recording verification statement of respondent No.3 complainant and after hearing his counsel and further giving opportunity of hearing to the present petitioners, directed issuance of process against the petitioners and one more accused for commission of offence punishable under section 166 r.w. 34 of I.P.C. Hence, this writ petition.

4. Learned counsel for the petitioners submits that respondent No.3 original complainant has not obtained previous sanction from the appropriate authority to lodge the complaint against the present petitioners, who are admittedly the public servants. The act complained against them is a part of discharge of their official duties and in absence of any sanction from the appropriate authority, the

Magistrate cannot take cognizance against them. Furthermore, petitioner No.1, who was President of Municipal Council is not party to the R.C.S. No. 14 of 2005. It is nowhere alleged in the complaint that prior to lodging of complaint, the said order of status quo was brought to the notice of petitioner No.1-President and despite having knowledge of said order, petitioner No.1-President has directed the contractor to carryout digging operations in the land owned and possessed by respondent No.3 original complainant. Even it has merely stated in the complaint that the digging operation in the land of the complainant, is carried out by the contractors at the instance of the present petitioners. So far as present petitioner No.2 is concerned, he was Chief Officer of the Municipal Council at the relevant time and the order, if any, passed by petitioner No.2 in the capacity of Chief Officer of Municipal Council, directing digging operation to the contractor in the land owned by respondent No.3 complainant, despite order of the Civil Court, is not placed on record. Consequently, there are vague allegations made in the complaint against both the petitioners and therefore, both the petitioners being the public servants, need to be protected in view of the provisions of Section 197 of Cr.P.C. The learned Magistrate has not considered the same and therefore, the impugned order directing issuance of process against the petitioners for the offence punishable under Section 166 r.w. 34 of I.P.C. is liable to be quashed and set aside.

5. Learned counsel for respondent No.3 original complainant submits that the writ petition is not maintainable in view of alternate remedy of challenging the order of issuance of process before the Sessions Court and the petitioners in spite of that remedy, have directly approached this Court. At the instance of present petitioners, digging operations have been carried out despite the order of Civil Court directing them to maintain status quo and therefore, the act complained against them is not while discharging their official duties. Learned Judge of the trial court has therefore, rightly issued process under Section 166 r.w. 34 of I.P.C. Section 166 of I.P.C. itself is a special provision against the public servant disobeying law, with intent to cause injury to any person. Learned counsel submits that there is no substance in the writ petition and writ petition is liable to be dismissed.

6. I have also heard learned A.P.P. for respondent Nos. 1 and 2.

7. It is not disputed that respondent No.3 original complainant had instituted R.C.S. No. 14 of 2005 against the petitioner No.2 Chief Officer, Municipal Council, Kundalwadi, Tq. Biloli, for decree of perpetual injunction in respect of land survey No. 6/1 owned and possessed by him. It is also not disputed that the learned Joint

C.J.J.D. Biloli has passed order dated 4.4.2005 directing the parties to maintain status quo in respect of the suit property. It further appears from the contents of complaint that at the instance of present petitioners, the contractor entered into the land of respondent No.3 original complainant and started digging operation in the said land on 25.4.2005. Admittedly, petitioner No.1 was the President of Municipal Council and he is not party to the suit instituted by respondent No.3 original complainant. It is nowhere alleged in the complaint that the order directing parties to maintain status quo was brought to the notice of petitioner No.1. Petitioner Nos. 1 and 2 were not supposed to enter into the land of respondent No.3 complainant and carry out digging operation by remaining present in the said land. It has only alleged in the complaint that at their instance the contractors had started digging operations in the land of respondent No.3 complainant on 25.4.2005.

8. There are vague allegations in the complaint against the petitioners. It is pertinent to note that the respondent-complainant has not filed any application before the Civil Court seeking action against present petitioner No.2 for having committed breach of the orders passed by the Civil Court. In absence of any such evidence, both the petitioners are entitled for the protection as contemplated under Section 197 of Cr.P.C. In the case in hand, the act constituting

an offence, is directly and reasonably connected with the official duties of the petitioners. Thus, the prosecution is incompetent in absence of sanction from the appropriate authority as provided under Section 197 of Cr.P.C. and learned Magistrate, though issued show cause notice to the petitioners, has not considered the same. The petitioners have challenged the initial show cause notice issued by the Magistrate and also the order passed by the Magistrate subsequent thereto in continuation of said show cause notice directing issuance of process for the offence punishable under Section 166 r.w. 34 of I.P.C.

9. In view of this, I do not think that the order passed by the Magistrate is sustainable in the eyes of law. The writ petition is maintainable seeking quashment of complaint lodged by the complainant without any sanction from the appropriate authority under Section 197 of Cr.P.C. Resultantly, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby allowed.
- II. The order dated 17.2.2006 passed by the learned J.M.F.C. Biloli in Special Criminal Case No. 159 of 2005

is quashed and set aside and the Special Criminal Case No. 159 of 2005 pending before the learned J.M.F.C. Biloli, is hereby dismissed, as against the present petitioners.

III. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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