

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

CRIMINAL APPLICATION NO. 1700 OF 2005

Rajkumar Mahadev Mane,
age 35 years, Occ. Service as Naib Tahsildar,
Tahasil Office, Kalamb,
R/o Kallamb, Tq. Kallamb,
Dist. Osmanabad. ...Applicant...
(orig accused no.2)

VERSUS

1. Nagnath s/o Bapurao Mali,
age 45 years, Occ. Agril,
R/o Kallamb, Tq. Kallamb,
Dist Osmababad.
2. The State of Maharashtra,
Through Police Station Officer,
Kallamb.
(Copy to be served on Public
Prosecutor of High Court of Judicature
Of Bombay Bench at Aurangabad.) ..Respondents.

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Advocate for Applicant : Mr S G Chapalgaonkar
APP for Respondents: Miss R P Gour

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CORAM : V.K. JADHAV, J.
Dated: August 29, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order of issuance of process passed by the Jt. Judicial Magistrate First Class, Kallamb in RCC No.288/2004 original accused no.2 has preferred this criminal application.

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

The applicant is working as Naib Tahsildar at Tahsil Office, Kallamb. Respondent No.1 has filed complaint against in all nine persons including present applicant alleging therein that the accused persons have rejected his application for entering his name into 7/12 extract with an intention to help the other side. It has alleged in the complaint that the present applicant had issued a notice to the owner of the land without any reason. It has thus stated in the complaint that accused persons including present applicant have committed an offence punishable under sections 193, 196, 197, 199, 465, 466, 471 read with section 34 of the Indian Penal Code. The learned Judge of the trial Court has issued the process against all the accused persons including present applicant for the aforesaid offences. Hence, this application.

3. The learned counsel for the applicant submits that, on 18.8.2003 as per the order passed by this Court, respondent no.1 had filed an application for recording his name as tenant in respect of the landed property. Said application came to be filed before the Tahsildar for compliance of the order passed by this Court. Learned counsel submits that a

detail note is prepared on 18.8.2003 by the Senior clerk of the Tahsil Office and the present applicant passed his remarks on it to the effect that concerned Talathi had not taken entry in compliance with the orders passed by the Court and for that purpose explanation from the concerned Talathi is required to be called. It has also submitted by way of remarks on it that, information be solicited from the non applicant as to whether the appeal is preferred against the Court orders. Furthermore, on the official note dated 20.9.2003, the present applicant has submitted his remarks before the Tahsildar that notices are required to be given to the parties and matter is required to be kept for hearing. Learned counsel submits that on the basis of these notes, the respondent-original complainant has lodged complaint against the present applicant.

4. Learned counsel submits that the act complained against the present applicant is about discharging of his official duties and therefore, prior sanction as provided under section 197 is required. In absence of that, the Magistrate cannot take cognizance and issue the process against the applicant.

5. I have also heard the learned APP for the State.

6. Learned counsel for respondent no.1-original complainant is absent.

7. On perusal of the impugned order, it appears that the learned Magistrate has given reference to the judgment and order passed by this Court with further observations that said orders are binding on the accused including the present applicant. It has also observed in the impugned order that accused no.1 Tahsildar has not obeyed the orders passed by the Civil Court as well as this Court and delivered the judgment as against findings recorded by the Civil Court as well as by this court. On perusal of said office note and remarks submitted by the present applicant on it, it appears that the applicant has expressed his opinion on the official note that explanation of the concerned Talathi is required to be called for the reason that even though said decision was given long back, concerned Talathi has not taken entry in the 7/12 extract. He has further expressed his opinion that, explanation of the applicant is also required to be sought for the reason that he has filed application belatedly. Furthermore, he has also submitted his remarks before his superiors that the information is required to be taken from

the other side whether any appeal is preferred against said orders. On the second official note dated 20.9.2003 since other side has referred certain decision rendered by the S.D.O., Bhoom after the year 2000, the Senior Clerk has recorded details of the said contention including contentions raised by the complainant and in that office note, in the light of the details given, present applicant submitted his remarks to the effect that the matter is required to be kept for hearing after giving notices to both the parties.

8. It is well settled that test to determine whether alleged action which constitute an offence had a reasonable and rational nexus with the official duties required to be discharged by the public servant. In the case in hand, alleged action so far as present applicant is concerned, which according to the respondent-complainant constitutes an offence had certainly a reasonable nexus with his official duties. Thus, the allegations made against the present applicant even though accepted as it is, no offence is made out as such and even assuming that said allegations have in fact attracts penal provisions as mentioned in the complaint, in the light of the above observations, previous sanction as provided under section 197 of the Code of Criminal Procedure is required in this case so far as applicant is

concerned. The learned Judge of the Trial Court has not considered the same and mechanically issued the process against the present applicant. Hence, following order.

O R D E R

1. Criminal Application is hereby allowed in terms of prayer clause '**B**' as against the present applicant.
2. Criminal Application is accordingly disposed of. Rule is accordingly made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

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aaa/-