

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 475 OF 2007

Ramesh S/o Babulal Chaudhari
Age : 55 years, Occu.: Additional
Superintendent of Police,
Detective Training School at
Nashik, Dist. Nashik,
R/o 27, Rushikeshi Magh Sector,
Sundarban Colony, CIDCO,
Nashik, Dist. Nashik

.. Petitioner
(Orig. Accused)

Vs.

1] The State of Maharashtra

2] Anandrao S/o Sadashivrao Pawar,
Age : 60 years, Occu.: Advocate,
R/o Parola, Tq. Parola,
Dist. Jalgaon

.. Respondents
(R.No.2-Ori. Complainant)

Mr. V.R. Dhorde, Advocate h/f Mr. P.S. Dighe, Advocate for
the petitioner
Mr. A.R. Kale, APP for the respondent/State
Mr. R.M. Deshmukh, Advocate for respondent no.2

CORAM : V.K. JADHAV, J.

DATE : 27/09/2016

ORAL JUDGMENT :

By way of this Petition, the petitioner seeks
quashing of the criminal complaint bearing Summons Case
No.386 of 1989 pending on the file of learned Judicial
Magistrate First Class, Parola.

2. Brief facts giving rise to the present Criminal Writ Petition, are as follows :-

. The petitioner was appointed as Police Sub Inspector in the year 1973 and in the year 2007, he was promoted to the post of Additional Superintendent of Police and was posted at Detective Training School, Nasik, District - Nasik. In the year 1989, he was posted as Police Sub Inspector, Parola. He was required to prepare report and submit the necessary documents alongwith the report, to the Sub Divisional Magistrate of that Division. On the basis of the record available in the Police Station and produced before him by the staff, the petitioner has submitted his report to the Sub Divisional Officer. Respondent no.2 - original complainant is a practicing lawyer at Parola. He was also the then Deputy Chief of Shivsena Unit of that area. The petitioner has prepared a report as far as respondent no.2 is concerned and submitted report to the Sub Divisional Magistrate, Amalner Division, Amalner. The respondent no.2 - original complainant has filed the present complaint bearing Summons Case No.386 of 1989 against the present petitioner, alleging therein that the petitioner has prepared the false documents, so as

to initiate the enquiry and for taking action under section 59 of the Bombay Police Act, externing the respondent no.2 for certain period from that area. It is alleged in the compliant that the petitioner has committed offences punishable under sections 166 and 167 of the Indian Penal Code.

. On 20/9/1989, the learned Judicial Magistrate First Class, Parola has issued the process for offence punishable under section 167 of the Indian Penal Code. The petitioner after his appearance before the learned Magistrate, filed application exhibit 9, stating therein that no sanction is taken before filing of the said complaint and, therefore, the Magistrate should not have taken cognizance of the said complaint. Furthermore, the petitioner had approached this Court by filing Criminal Application No.632 of 1990 and this Court by order dated 2/12/1991, allowed the said Criminal Application partly and directed the Magistrate, Parola to decide the application at exhibit 9 in the pending Summons Case No. 386 of 1989 and decide the question, as to whether sanction under section 197 of the Code of Criminal Procedure is necessary and whether the prosecution is bad on account of not having been

instituted after obtaining any such sanction. Further, liberty is also granted to the petitioner to challenge the order of issuance of process after the question of sanction is decided by the learned Judge while disposing the application at exhibit 9.

. On 25/10/1994, the petitioner filed application exhibit 75, contending therein that he is already suffering from heart problem and, therefore, he should be exempted from appearing in the Court. The learned Magistrate has allowed the said application and granted exemption to the petitioner from his attendance before the Court till the application exhibit 9 is disposed of. However, in the year 2006, the respondent no.2 submitted an application before the learned Magistrate contending therein that the petitioner is not appearing in the Court and is prolonging the matter. The learned Magistrate passed the order on the said application on 23/3/2006 and cancelled the exemption and issued summons to the petitioner. Thus, the petitioner has approached to this Court by filing the present Criminal Writ Petition.

3. Learned counsel for the petitioner submits that being aggrieved by the order of issuance of process, the petitioner chose to file application exhibit 9 before the learned Magistrate, contending therein that though the sanction is required, the complaint is filed before the Court without obtaining the sanction from the competent authority and further also approached this Court by filing Criminal Application no.632 of 1990, challenging thereby the order of issuance of process passed against him by the learned Magistrate. The learned counsel submits that the respondent no.2 - original complainant, who is lawyer by profession, submitted the application before the competent authority for sanction to prosecute the petitioner and the competent authority i.e. Deputy Inspector General of Police, by communication dated 29th May, 1980 informed to the respondent no.2 that sanction to prosecute the petitioner has been refused vide order dated 18th April, 1990.

4. Learned counsel for the petitioner submits that even though the respondent no.2 was a party to Criminal Application no.632 of 1990 before this Court, the respondent no.2 - original complainant has suppressed

this material fact from this Court. Consequently, this Court has passed the order on 02/12/1991, as referred in the foregoing paragraphs. If the respondent no.2 – original complainant would have pointed out the said refusal of sanction to this Court, then this Court would not have directed the learned Magistrate to decide the application at Exhibit 9.

5. Learned counsel for the petitioner submits that it is alleged in the complaint that the proposal for initiation of the externment proceedings was sent by the petitioner to the Sub Divisional Officer of Amalner Division, Amalner, wherein false information is furnished. It is alleged in the complaint that even though the Criminal Case no. 77 of 1984 is shown pending, no report was submitted by the petitioner, however, the said case was disposed of by the Court in the year 1985 itself. It is also alleged in the complaint that the chapter case referred in the said proposal of externment, the name of respondent no.2 is not appearing. Learned counsel further submits that though the case came to be disposed of by the Court, it was shown pending in the record of the Police station and on the basis of the information collected by the

staff, the petitioner had submitted the proposal to the Sub Divisional Officer. Furthermore, on the basis of his proposal, the Sub Divisional Officer has issued notice to the respondent no.2. Learned counsel further submits that the allegations made in the complaint are in respect of the petitioner in discharge of his official duty. There is a reasonable and rational nexus between the act complained and his official duty. Even though the said proposal may contain some factually incorrect information, however, it cannot be forgotten that the petitioner was discharging his official duties in submitting the said proposal to the Sub Divisional Officer and it is for the Sub Divisional Officer to consider the said proposal either in positive manner or in the negative manner. The petitioner has no authority to pass externment order against the respondent no.2 or any other person. Consequently, the sanction is required for prosecution of the petitioner and respondent no.2, being a lawyer, had also opted for the same, by submitting an application before the competent authority.

6. Learned counsel for the petitioner by pointing out Roznama dated 13/4/1993, submits that the learned

Magistrate heard the application exhibit 9 however kept the said application pending at the request of respondent no.2 – original complainant for the reason that the respondent no.2 – original complainant made submission before the Magistrate that the Bar Council of Maharashtra had taken initiative to challenge the externment proceedings against him and he wanted to produce copy of the said petition before the Court. Thereafter, respondent no.2 – original complainant did not bother to submit the said copy before the Court and the learned Magistrate has also not decided the application exhibit 9 since the proceedings of the said case were stayed by this Court in this Criminal Writ Petition. Learned counsel further submits that the learned Magistrate for no reason, cancelled the exemption granted earlier to the petitioner and further issued summons against him without passing any order on the application exhibit 9. It is pertinent that the respondent no.2 – original complainant had submitted an application before the learned Magistrate for cancellation of the exemption granted to the petitioner herein/original accused and on his application, the learned Magistrate has passed such an order.

7. Learned counsel for the petitioner further submits that in the given set of facts and circumstances, the complaint is liable to be dismissed for want of sanction. Further, the said case is pending since the year 1989 and it is almost a stale case without any progress. The learned Magistrate has not bothered to decide the application exhibit 9 for many years. There is no point in sending the matter back, directing the learned Magistrate to decide the application exhibit 9 now. Respondent no.2 – original complainant had suppressed the material facts before this Court and even before the learned Magistrate that the sanction to prosecute the petitioner had been refused by the competent authority. Even the respondent no.2 – original complainant has not bothered to file his reply to application exhibit 9.

8. Learned counsel for the petitioner submits that the petitioner was 55 years of age when he filed the present criminal writ petition. Till this time, he must have been retired from the service. Even though, if he is retired, he cannot be prosecuted or the Magistrate cannot proceed with the trial of the case for the reason that the sanction to prosecute the petitioner has been

earlier refused when the petitioner was in office.

9. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the following cases :-

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

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

3) **Chittaranjan Das Vs. State of Orissa** reported in AIR 2011 S.C. 2893

4) **Louis Peter Surin Vs. State of Jharkhand** reported in AIR 2011 SC (Supp) 189

10. Learned counsel for respondent no.2 – original complainant submits that the respondent no.2 – original complainant was lawyer by profession and the petitioner with certain false information, submitted the proposal of externment against the practicing lawyer. The petitioner deliberately submitted the said proposal to Sub Divisional Officer, Amalner with some ulterior motive. The petitioner has therefore committed the

offence for which the sanction under section 197 of the Code of Criminal Procedure is not required. Learned counsel further submits that application exhibit 9 is still pending before the Magistrate and by directing the Magistrate to decide the application exhibit 9, in a time bound manner, this Writ Petition can be disposed of.

11. Respondent no.2 – original complainant, though received the communication in the year 1990 itself from the competent authority that his application seeking sanction to prosecute the petitioner has been turned down, suppressed this material fact when this Court heard Criminal Application No.632 of 1990 on merits. Even the petitioner being a lawyer, understood the importance of sanction when the act alleged against the petitioner had nexus with his official duties and, therefore, submitted the application before the competent authority seeking sanction to prosecute the petitioner. Even otherwise, it was part of the official duty of the petitioner to submit such type of proposal to the Sub Divisional Officer of that region and it was for the Sub Divisional Officer to take appropriate decision in the matter. The petitioner might have

submitted inaccurate information in the said proposal, however, the said externment proceedings could have been decided by the Sub Divisional Officer only after giving notice to the respondent no.2 herein. Thus, in the given set of facts, it is manifest that the sanction, in all probability was required for prosecuting the petitioner.

12. In the instant case, I am shocked by observing the conduct of the learned Magistrate. I do not understand, as to why the application exhibit 9 was kept pending for many years even though this Court has directed the learned Magistrate way back in the year 1991 to decide the application exhibit 9. In the present Writ Petition, this Court in the year 2007, by way of interim order, stayed the further proceedings of the case. In spite of such order being passed, it is surprising that the learned Magistrate has not decided the application exhibit 9 for the reason best known to him. It appears from the certified copy of the roznama, particularly dated 13th April, 1993 that in the year 1993 itself, the learned Magistrate heard the submissions of both the parties and, thereafter, adjourned the matter at the request of the present respondent no.2 for

submitting certain documents on record. In view of this, it is futile exercise to send the matter back by directing the learned Magistrate to decide the application exhibit 9 in the backdrop of the fact that respondent no.2 – original complainant has suppressed the material facts before this Court in Criminal Application No.632 of 1990 and even thereafter, did not bring the said fact of refusal of sanction by the competent authority, to the notice of the learned Magistrate.

13. In view of the above discussion, and in view of the ratio laid down by the Supreme Court in the cases of **Abdul Wahab Ansari Vs. State of Bihar and anr.** reported in 2001 ALL MR (Cri) 183 (S.C.) and **Gauri Shankar Prasad Vs. State of Bihar and Anr.** reported in 2000 ALL MR (Cri) 1691 (S.C.) (cited supra), the complaint bearing Summons Case No. 386 of 1989 is liable to be quashed and set aside.

14. Accordingly, I proceed to pass the following order :-

ORDER

I) Criminal Writ Petition is allowed in terms of prayer clause (B).

II) Rule is made absolute in the above terms.

15. Criminal Writ Petition is accordingly disposed of.

[V.K. JADHAV]
JUDGE

arp/