

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

CRIMINAL WRIT PETITION NO. 93 OF 2004

Pravin Nathu Chaudhari,
Age: 43 years, Occ: Business,
R/o. Gandhi chowk,
Nandurbar, Dist. Nandurbar.

...Petitioner

versus

1. Jagannath Krushna Lokhande,
Age: 58 years, Occ: Service,
R/o. Dondaicha,
Tal. Sindkheda, Dist. Nandurbar.

2. The State of Maharashtra
Through Department of Home,
Mantralaya, Mumbai.

...Respondents

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Mr. A.N. Sabnis, Advocate h/f Mr. J.R. Shah, Advocate for petitioner
Mr. S.V. Mundhe, Advocate for respondent No. 1
Mr. R.V. Dasalkar, A.P.P. for respondent/State

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CORAM : N.W. SAMBRE, J.

DATE : 4th MAY, 2016

ORAL ORDER :

Heard Mr. Sabnis, learned Counsel for the petitioner and
Mr. Mundhe, learned Counsel for respondent No.1.

2. The petitioner herein, original complainant preferred complaint bearing S.T.C.C. No. 657 of 2002 for an offence punishable under Sections 166, 167 and 177 of the Indian Penal

Code, according to the petitioner, the respondent-accused, who is officer of the Maharashtra State Electricity Distribution Company Limited, has mis-communicated, as such, committed crime in question. Learned Magistrate, having considered the claim of the present petitioner, by an order 08/08/2002 was pleased to dismiss the complaint under Section 190 of the Code of Criminal Procedure at pre-cognizance stage, on the ground that the sanction to prosecute the respondent-accused as contemplated under Section 197 of the Code of Criminal Procedure was not obtained by the complainant.

3. In Criminal Revision Application No. 16 of 2002 preferred by the petitioner, learned Adhoc Additional Sessions Judge, Nandurbar, confirmed the order of the learned Magistrate dismissing the complaint vide his order dated 03/10/2003. As such, present criminal writ petition.

4. Mr. Sabnis, learned Counsel for the petitioner, while relying upon the judgment of the Karnataka High Court in the matter of ***K.C. Ramesh vs. The State of Karnataka*** reported in ***MANU/KA/2916/2014*** would urge that once the petitioner initiated the complaint which was preceded with request to competent authority to grant sanction, the complaint is very much maintainable.

He would invite attention of this Court to the judgment of the Apex Court in the matter of ***Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another*** reported in ***(2012) 3 SCC 1964*** that in case, the request for sanction as required under Section 197 of the Code is made to prosecute the public servant and authority has neither replied nor granted sanction, then the complainant can proceed ahead with the complaint considering 'deemed sanction'.

5. He would further submit that what was expected of the authority i.e. employer is, as the present petitioner has filed complaint against respondent-accused, the authority should have either refer the complaint to the police or such complaint should have been considered to be an application for grant of sanction to prosecute. As such, according to him, both the orders i.e. one passed by learned Magistrate and other by revisional Court are not sustainable.

6. Mr. Mundhe, learned Counsel for the respondent-accused submits that the factual matrix as is narrated is some what different. According to him, at no point of time, the petitioner has approached the competent authority seeking sanction to prosecute the respondent-accused as contemplated under Section 197 of the Code of Criminal Procedure. He would further urge that the application for sanction to prosecute as is claimed by the petitioner

was moved to Lokayukta, which was rejected by the said authority, as the issue was not within its jurisdiction. The petitioner, as such, at no point of time, has sought sanction to prosecute the respondent-officer. He would then submit that the law laid down by the Apex Court in the matter of **Anil Kumar and others vs. M.K. Aiyappa and another** reported in **(2013) 10 SCC 705** provides that in case, the Magistrate deals with the complaint which calls for order to investigate upon private complaint against public servant. He would rely upon the observations made by Hon'ble Apex Court in Paragraph-21 of the said judgment.

7. Having dwelt upon the controversy as is sought to be espoused in the present case, upon perusal of original record and proceedings of the present case, it appears that office of Lokayukta, Maharashtra, while responding to the complaint of the petitioner dated 17/07/2002 vide communication dated 09/08/2002, has informed the petitioner that the respondent-officer is not public servant within definition of 'public servant'. It was then informed him that his request for grant of sanction under Section 197 of the Code of Criminal Procedure is not within jurisdiction of Lokayukta, the same is not accepted and his application is treated to be closed.

8. After the above referred communication was issued in

favour of petitioner, the service of which being official communication has to be presumed, the petitioner has not taken any steps to approach the employer of respondent-officer seeking sanction to prosecute as provided under Section 197 of the Code of Criminal Procedure. The very conduct of the petitioner that he has moved 'Lokayukta' seeking sanction takes to the conclusion that the petitioner also admits that the respondent is public servant. In this background, what appears is that the petitioner, at no point of time, has approached the employer of respondent-officer seeking sanction pursuant to Section 197 of the Code of Criminal Procedure to prosecute him. In the above referred factual background, the orders passed by both the Courts below, are just and proper and in accordance with the legal provisions.

9. Having noted that the petitioner, at no point of time, has approached sanctioning authority seeking sanction for prosecution of the respondent-officer, the issue of 'deemed sanction', particularly based on the judgment of the Apex Court in the matter of **Dr. Subramanian Swamy** (*supra*) will be of hardly any assistance.

10. Apart from above, the contention of the petitioner that his complaint against the officer to the employer should have been treated as application for grant of sanction, is also required to be

rejected, as no such prayer or request to that effect is brought to the notice of this Court by the petitioner. In this background, no case for interference in extraordinary jurisdiction is made out. As such, criminal writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]

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