

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

Criminal Writ Petition No. 501 of 2004

District : Osmanabad

Vithal s/o. Bhimrao Bonder,
Age : 60 years,
Occupation : Pensioner,
R/o. Utmi,
Taluka & Dist. Osmanabad.

.. Petitioner
(Original complainant)

versus

1. The State of Maharashtra.

2. Shri S.V.R. Srinivas,
Age : 35 years approximately,
Occupation : Govt. Service
(IAS),
R/o. C/o. Solapur Municipal
Corporation,
Solapur.

3. A.G. Thakare,
Age : 45 years,
Occupation : Ex-Education
Officer,
Z.P. Osmanabad
(At present Dy. Director of
Education, Latur).

.. Respondents.

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*Mr. V.M. Maney, Advocate, holding for
Mr. V.M. Kendre, Advocate, for the petitioner.*

*Mr. K.S. Hoke Patil, Addl. Public Prosecutor,
for respondent no.01.*

*Mr. S.P. Shah, Advocate, holding for
Mr. P.V. Barde, Advocate, for respondent no.02.*

Mr. Gajendra Jain, Advocate, holding for

Mrs. A.S. Rasal, Advocate, for respondent no.03.

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CORAM : Z.A. HAQ, J.

DATE : 14TH DECEMBER 2016

ORAL JUDGMENT :

Heard learned Advocates for the respective parties.

02. The petitioner has challenged the judgment passed by the Sessions Court allowing the Revision Application filed by the respondent no.02 and setting aside the order passed by the Chief Judicial Magistrate directing issuance of process against the respondent no.02 for offence under Section 500 read with Section 34 of the Indian Penal Code.

03. The petitioner filed complaint before the Chief Judicial Magistrate alleging that the accused (present respondent nos.02 and 03) had failed to discharge their official duties and the present respondent no.02 after his visit to the institution on 02nd April, 1996 and 06th April, 1996, had made certain endorsements on the record with the oblique intention of harassing the complainant. The complainant alleged that because of the incorrect endorsements made by the accused on the record, the complainant was suspended on 01st May, 1996 and an

enquiry was conducted against him.

The petitioner had prayed that the respondent nos.02 and 03 be tried and convicted for the offence punishable under Section 500 read with Section 34 of the Indian Penal Code. The learned Chief Judicial Magistrate passed an order on 19th November, 2003 and directed issuance of process against the respondent nos.02 and 03. The respondent no.02 challenged the order passed by the Chief Judicial Magistrate, in Revision Application before Sessions Court. The learned Addl. Sessions Judge has allowed the Revision Application by the impugned judgment.

04. With the assistance of the learned Advocates for the respective parties and the learned Addl. Public Prosecutor, I have examined the documents placed on the record of the petition. It is undisputed that the petitioner had prayed for sanction to prosecute the respondent nos.02 and 03 by the applications dated 25th September, 2002 and 07th of January 2003. It is undisputed that the complaint is filed by the petitioner without there being any order of sanction as required by Section 197 of the Code of Criminal Procedure, 1973. The averments in the complaint do not show that the complainant is alleging that the respondent no.02 has committed any overt act and exceeded his official duties. The learned Addl. Sessions Judge has rightly concluded

that the complaint filed by the petitioner is not maintainable without there being an order granting sanction as per Section 197 of the Code of Criminal Procedure, 1973.

05. Apart from this, the complaint is filed on or about 23rd July, 2003 making grievance about the incident of April, 1996. In the complaint, there is no explanation for the inordinate delay in the matter.

06. The learned Chief Judicial Magistrate directed issuance of process without adverting to the relevant aspects. The learned Addl. Sessions Judge has rightly dealt into the relevant points and set aside the order passed by the Chief Judicial Magistrate.

I see no reason to interfere with the impugned judgment. The Writ Petition is dismissed. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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