

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

CRIMINAL WRIT PETITION NO. 553 OF 2004

Bharat Asaram More .. Petitioner
Age. 27 years, Occ. Service,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

Versus

1. Yadavrao Damu Patil .. Respondents
Age. 48 years, Occ. Service,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
At present L.C.B., Jalgaon.
2. Sanjay Baburao Chavan
Age. 33 years, occ. Service,
R/o. Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
3. The State of Maharashtra

Mr.N.R. Bhavar, Advocate with Mr. Avinash Khedkar,
Advocate for the petitioner.
Mr.A.B. Jagtap, Advocate h/f. Mr. D.V. Sapkal, Advocate
for respondent Nos. 1 & 2.
Mr.K.N. Lokhande, A.P.P. for respondent/State.

CORAM : Z.A. HAQ, J.
DATED : 29.11.2016

ORAL JUDGMENT :-

. Heard. The petitioner/complainant filed a complaint before the learned Magistrate alleging that the Police Inspector, Kopargaon (present respondent No.1)

made attempts to arrest the complainant, however, the Police Inspector failed in his attempts as the complainant was out of town and when the complainant returned and got knowledge, he visited the Police Station to enquire about the matter and there he was beaten and illegally detained. The complainant prayed that the Police Inspector (present respondent No.1) and the Police Constable (present respondent No.2) be prosecuted and convicted for the offences punishable under sections 324, 323, 341, 504, 506 read with section 34 of the Indian Penal code. On receiving the complaint, the learned Magistrate recorded statement of the complainant on verification and felt satisfied that the order directing issuance of process against present respondent Nos.2 & 3 for offence under sections 323, 341 read with section 34 of the Indian Penal Code was required to be passed. The learned Magistrate was conscious that the present respondent Nos.2 and 3 are public servants and the issue of sanction as per section 197 of the Criminal Procedure Code would arise. The learned Magistrate examined this aspect and relying on the judgment given in the case of **P.K.Pradhan Vs. The State of Sikkim, AIR 2001 SC 2547** recorded that whether the act complained of was performed by the present respondent Nos.2 & 3 in the course of performance of their official duty will have to be examined during trial and the issue whether the sanction

was necessary at pre-cognizance stage, was left open.

. The present respondent Nos.2 and 3 challenged the above order passed by the learned Magistrate before the Sessions Court by filing Revision Application, which is allowed by the impugned judgment. The learned Additional Sessions Judge has concluded that the order passed by the learned Magistrate directing issuance of process against present respondent Nos.2 & 3 is bad in law as the Magistrate could not have taken cognizance unless sanction as per section 197 of Criminal Procedure Code was granted by the competent authority. The complainant being aggrieved by the order passed by the Additional Sessions Judge, has filed this writ petition.

02. With the assistance of learned Advocates for the respective parties and learned A.P.P., I have examined the documents placed on the record of the writ petition. At present there is no serious dispute that the complainant attended the police station on the relevant date and that some incident occurred. The alleged incident is of 3rd May, 2004. The complainant has placed on record a copy of application alleged to have been given by the present petitioner (complainant) to the Tahsildar, Kopargaon on 3rd May, 2004 stating that he was ruthlessly beaten by the present respondent No.2 and

other police officers and he was suffering from very acute pain and he should be referred to the Civil Hospital for examination and the Jailor should be directed to take steps to that effect. The petitioner has placed on record the copy of certificate issued by the Medical Officer, Kopargaon Municipal Hospital on 3rd May, 2004, which shows that the complainant suffered some injuries.

03. The principal submission on behalf of the respondent Nos.2 and 3 is that whatever action is taken by them was in discharge of their official duty and therefore the Magistrate could not have taken cognizance unless the competent authority granted sanction for prosecution of respondent Nos.2 and 3. To support the submission, the learned Advocate for the respondent Nos. 2 and 3 has relied on :-

(i) Judgment given by the Hon'ble Supreme Court in the case of Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr., 2014 (1) SCC (Cri) 35.

(ii) Judgment given by this Court in the case of Manoj s/o. Prabhakar Lohar Vs. Rahemat Bee Mohd. Hasam, Cri. Application No. 632 of 2009.

(iii) Judgment given by the Hon'ble Supreme Court in the case of D.T. Virupakshappa Vs. C. Subhash, 2015 (12) SCC 231.

04. It is well established that cognizance of complaint against a public servant cannot be taken by the Magistrate unless sanction is granted by the competent authority. However, the provisions of section 197 of the Criminal Procedure Code do not create absolute bar for taking cognizance of complaint against a public servant and the bar operates only when the complaint against the public servant is in respect of some act which is done or purported to be done in the discharge of official duty. Whether the public servant acted in discharge of his official duty is a question which is required to be adverted to on the basis of nature of allegations and the circumstances brought on record.

05. In the present case the occurrence of incident is not seriously disputed. The respondent Nos.2 and 3 have not controverted the claim of the petitioner that he submitted an application to the Tahsildar, Kopargaon requesting for medical examination. The respondent Nos. 2 and 3 have not controverted the claim of the petitioner relying on the medical certificate that he sustained injuries. Ultimately, in the trial the claim of the petitioner may turn out to be false or unacceptable, but at this stage there is material on record which is rightly relied upon by the learned Magistrate for directing issuance of process against respondent Nos. 2

and 3. Going by the allegations in the complaint, the petitioner was beaten up in the police station. There is nothing on record at this stage to show that the accused, while discharging the official duty were required or forced to act in a manner which resulted in causing injuries to the complainant. These points will have to be considered at the trial.

06. In view of the above, in my view, the order passed by the learned Additional Sessions Judge is unsustainable.

. Hence, the following order :-

(i) The impugned order passed by the Additional Sessions Judge, Kopargaon in Criminal Revision No.16 of 2004 on 21.09.2004 is set aside.

(ii) The order passed by the learned Judicial Magistrate, First Class, below Exh.1 in Cri.M.A. No.371 of 2004 on 04.06.2004 is restored.

. Rule made absolute in above terms. In the circumstances, parties to bear their own costs.

[Z.A. HAQ, J.]