IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 447 of 2005

* Dr Prakash s/o Kundlikrao Kothule,
Age 38 years,
Occupation : Nil,
R/o Wakod, Taluka Jamner,
District Jalgaon. .. **Petitioner.**

Versus

1) The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

2) The Chief Executive Officer,
Zilla Parishad, Jalgaon.

3) The Superintendent of Police,
Jalgaon.

4) Shri. K.R. Gavale,
Police Sub Inspector,
Pahur Police Station, Pahur,
Taluka Jamner,
District Jalgaon. .. **Respondents.**

Shri. A.S. Bayas, Advocate, for petitioner.

Shri. S.D. Ghayal, Additional Public Prosecutor, for respondent Nos.1 to 3.

Coram: T.V. NALAWADE &
A.M. DHAVALE, JJ.

Date: 5 October 2017

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed for many reliefs but due to subsequent developments only relief in prayer clause 34 (D) remains and it is as under. Both the sides are heard.

> "*(D) To direct the respondents to forthwith pay an amount of Rs.5,00,000/- to the petitioner for violation of his life and liberty on account of illegal arrest and prosecution of the petitioner, by issuing a writ of mandamus or any other appropriate writ, order or direction.*"

2) The petitioner was working as Medical Officer in Pahur Primary Health Centre, District Jalgaon and he was also in-charge of Wakod Primary Health Centre. One Santosh Jadhav was working as Junior Assistant in Zilla Parishad and he was in charge of the accounts of Pahur and Wakod Primary Health Centres. Due to complaints made by many employees of the Zilla Parishad that their amounts which were deducted from salary for contribution to provident fund were not credited in their provident fund accounts inquiry was made. Even audit was done. This amount was arrears of salary in view of implementation of 5^{th} Pay Commission and as per the

directions of the Government the amount was to go into the provident fund account. After noticing that the amount was not deposited and it was misappropriated report was given by the auditor to police station Pahur and the crime at CR No.29/2005 came to be registered for offences punishable under section 406, 408, 409 of the Indian Penal Code. The report was given against Jadhav.

3) During investigation, employees like Vasant Mahajan, Devika Choudhari, Kashinath Patil, Suresh Chavan etc. gave statements that present petitioner had helped Jadhav and only due to the present petitioner the amount was collected separately of the employees and the amount was misappropriated.

4) The papers of investigation show that a cheque of amount of Rs.2,68,070 dated 31-7-2003 was sent by the Chief Executive Officer of the Zilla Parishad in the name of present petitioner who was in charge of Wakod Primary Health Centre. This cheque was sent by the petitioner for encashment and it was sent to District Central Cooperative Bank. The cheque was for making the

aforesaid payment. In stead of making payment in the accounts of the employees, two demand drafts were collected by using the cheque amount. The amount of Rs.1,52,348/- in respect of five employees for which separate demand draft was obtained was not deposited in the provident fund account of 5 employees and by withdrawing the cash, the amount was misappropriated.

5) Papers of investigation show that Jadhav's successor could not get charge of record in respect of aforesaid transactions from Jadhav. The record since 2000-2001 like cash book, vouchers in respect of amount of Rs.2,68,070 were not available. Statement of Chavan, successor of Jadhav came to be recorded. Suspicion is expressed by the investigating officer that the relevant record is destroyed by accused persons to destroy the evidence.

6) The record and the statements show that even when directions were given by the Chief Executive Officer of the Zilla Parishad to petitioner to give report to police, the petitioner avoided to give report against Jadhav. In stead of giving report he requested for permission to get

audit done. The aforesaid circumstances and the nature of allegations show that for this incident, audit was not at all necessary and everything was a matter of record. Only explanation if at all given by Jadhav could have been considered.

7) The auditor filed report as steps were not taken by present petitioner. The petitioner wants to use the circumstances that in the decision given by the trial Court in the case which was filed in the aforesaid matter he came to be acquitted. Due to acquittal, it is the case of the petitioner, that he was unnecessarily arrested by police and he was made accused when he could have been made witness against Jadhav. It is his contention that he was made accused mala fidely and due to the arrest and detention he was humiliated. The learned counsel for the petitioner placed reliance on the guidelines given by the Apex Court in the case reported as **D.K. Basu v. State of West Bengal (1997) 1 SCC 416**. It is the case of the petitioner that the guidelines were not followed and there was violation of his rights given under Article 21 of the Constitution of India.

8) The learned counsel for the petitioner placed reliance on the observations made in other cases like **AIR 1983 SC 1086 (Rudal Sah v. State of Bihar)** and **AIR 1986 SC 494 (Bhim Singh v. State of J. and K.)**. The facts of the two reported cases were altogether different. In the present proceeding direction was given by this Court to make inquiry into the allegation of *mala fides* and illegal arrest. Direction was given to the District Superintendent of Police and inquiry was made through Additional Superintendent of Police. Report is received that action was not *mala fide* and there was material against the petitioner and as there was order of the learned Judicial Magistrate, the detention cannot be called as illegal.

9) The papers already mentioned show that there was allegation of misappropriation and there was allegation against the present petitioner that he was also involved in the offence. Due to the statements and aforesaid circumstances he came to be arrested. Statements of the witnesses were recorded on 5-4-2005 and 6-4-2005 and the petitioner was arrested on 22-6-2005. The case diary is verified by superior officer of the

investigating officer during inquiry. The petitioner was produced before the Judicial Magistrate within 24 hours of the arrest and he was released on bail on 25-6-2005. He did not make complaint against the investigating officer when he was produced for police custody remand before the Magistrate. As per the record, intimation of his arrest was given to his friend, one Dr. Lahane.

10) When the accused is produced before the Magistrate after arrest and prayer is made for police custody remand, the sum and substance of allegations and material is mentioned in remand report and ordinarily, police officer remains present with the accused to satisfy the Magistrate on the requirement of police custody. Grant or refusal of police custody is within the discretion of the Judicial Magistrate. In view of provision of section 114 of the Evidence Act it needs to be presumed that proper procedure was followed. Further, in view of the aforesaid circumstances it cannot be said that there was no material at all against the petitioner. The circumstances that due to him two separate demand drafts came to be created and list of only 7 employees

which was prepared was placed before him for sending the provident fund amount in their accounts when this amount was of 13 employees was there. It was submitted for the petitioner that he had recently joined the service and Jadhav misused this circumstance and petitioner committed the mistake. Such defence cannot be considered as it was the stage of investigation. After all, it is the subjective satisfaction of the investigating officer in this regard and the court is expected to keep that in mind. Thus it cannot be said that the arrest was illegal or the detention of the petitioner was illegal. There is no question of granting compensation in favour of the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

Sd/- Sd/-
(A.M. DHAVALE J.) **(T.V. NALAWADE, J.)**

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