IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 914 of 2009

* Dadasaheb s/o Dattatraya Lagad,
Age 55 years,
Occupation : Service,
R/o Omsai Niwas, Hanuman Nagar,
Daund Road, Ahmednagar,
At Present R/o Sales Tax Office,
Nandurbar, Dist. Nandurbar. .. **Petitioner.**

Versus

1) The State of Maharashtra,
Through the Secretary,
Finance and Planning Department,
Mantralaya, Mumbai - 32.

2) The Additional Commissioner
Sales Tax (Establishment),
Maharashtra State Mumbai
Vikrikar Bhavan,
New Building, 3rd Floor,
Mazgaon, Mumbai 400 010. .. **Respondents.**

Original respondent Nos.3 to 7
are deleted vide order dated
6 September 2017.

Shri. N.V. Gaware, Advocate, for petitioner.

Shri. V.S. Badakh, Additional Public Prosecutor, for respondent Nos.1 and 2.

Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.

Date : 15 SEPTEMBER 2017

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

1) The petition is filed for giving direction to the respondents to see that sanction is given under section 197 of Criminal Procedure Code to prosecute the superior officers like Deputy Commissioner of Sales Tax, Joint Commissioner, Additional Commissioner, Assistant Commissioner, Sales Tax Inspector for the offence of destruction of record of the office mala fidely with the intention to falsely implicate the present petitioner in departmental inquiry and other matters. Both the sides are heard.

2) The petitioner has been working as a Clerk in Sales Tax Office at Ahmednagar. Initially the aforesaid superior officers were made party respondents to the present proceeding but in view of the nature of relief claimed which is mainly against the Government, they were subsequently deleted from the proceeding. It is the contention of the petitioners that in the year 2005 a

departmental enquiry was started against him under the provisions of the Maharashtra Civil Services Rules, 1979 for imposing major penalty on the basis of preliminary enquiry made by the Sales Tax Officer. It is his contention that all the superior officers had joined hands and only to implicate him a preliminary report was obtained and some false entries were made in the record. After filing reply to the charges levelled against him in departmental enquiry, he requested authority for issuing sanction order against those officers in November 2005 under section 197 of the Criminal Procedure Code. It is contended that the proposal was rejected in January 2007 and so first writ petition bearing No.175/2008 was filed in this Court. It is contended that a direction was given to the authority to see that reasoning is given for rejection of the proposal. It is his contention that he came to be exonerated in the year 2007 in the departmental enquiry. It is contended that again unreasoned order is passed by which permission is refused under section 197 of the Criminal Procedure Code by the respondent - competent authority. Relief is claimed for quashing and setting aside that order also.

3) This Court has carefully gone through the contentions of the present petitioner made against the superior officers. They are mainly in respect of the steps taken to start departmental enquiry and it is also contended that even when audit was done of the office in the past and no irregularity was found, only to harass him charges were levelled of irregularity against him in respect of some entries made in the years 1996-97, 1997-98 and 1998-99. Even if the allegations are considered as they are, it can be said that it will not be possible for the present petitioner to show that the aforesaid superior officers had destroyed the record or had manipulated the entries and their acts amount to offences punishable under sections 166 and 167 of the Indian Penal Code. The record produced shows that the grievances are in respect of action taken against him by the superior officers. This Court has gone through the orders made by which the authorities refused the permission. Though the reasons are not found in both the orders, the fact remains that even in the application made to the authority to accord sanction there are no specific allegations to make out the case. At the time of the sanction necessary material is

required to be made available including specific allegations against each person against whom sanction is to be issued. From the record, it can be said that there is no such material available. In view of these circumstances this Court holds that it is not possible to interfere in the matter and issue direction which is prayed. In the result, the petition stands dismissed. Rule is discharged.

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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