

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1067 OF 2018

Dnyaneshwar @ Kailsapati s/o.
Ishwar Suryawanshi,
Age 33 years, Occu. Business,
R/o. Bijalwadi, Tq. Degloor,
District Nanded.

....Petitioner.

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Markhel,
Tq. Degloor, Dist. Nanded.
2. Sunil s/o. Kishanrao Koknare,
Age 48 years, Occu. Service,
Serving as Gram Sevak,
Gram Panchayat Bijalwadi
Tq. Degloor, Dist. Nanded.

....Respondents.

Mr. S.B. Gastgar, Advocate for petitioner.

Mrs. P.V. Diggikar, APP for respondent No. 1/State.

Mr. A.V. Patil, Advocate h/f. Mr. A.N. Suryawanshi, Advocate for
respondent No. 2.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 19/10/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.
- 2) The proceeding is filed under Articles 226 and 227 of
Constitution of India and section 482 of Criminal Procedure Code for

relief of quashing of F.I.R. No. 79/2018 registered with Markhel Police Station, Tq. Degloor, District Nanded for offence punishable under section 353 of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Sunil, who is working as Gram Sevak of village Bijalwadi, Tahsil Degloor. According to him, on 2.4.2018 monthly meeting of Village Panchayat was called. It is his contention that Member of Village Panchayat Smt. Prabhawati Suryawanshi was not attending monthly meeting since 2015, since the year of her marriage. Present applicant Dnyaneshwar is brother of said lady. It is contended that on that day at 11.00 a.m. when meeting was over, applicant entered the office of Village Panchayat, snatched register of attendance of monthly meeting of Village Panchayat and ran away. It is contended that he requested the applicant to return the register, but he did not return the register and so, ultimately, he was required to give report against the applicant.

3) When, according to the first informant incident had taken place on 2.4.2018, the report was given to police on 15.6.2018. The submissions made show that on 16.5.2018 the present applicant filed proceeding for disqualification of Village Sarpanch on the ground that adequate numbers of monthly meetings were not called by Sarpanch. Gram Sabhas were also not conveyed by the Sarpanch and there were irregularities in Government projects of Gharkul and toilet

facility. Notice of this proceeding was issued by the competent authority and only after that the F.I.R. was given by Gram Sevak. Gram Sevak was made party to the proceeding filed by the present applicant.

4) The learned counsel for first informant submitted that the sister of present applicant never remained present for monthly meeting and proceeding was initiated for her disqualification on that ground and to save her from that proceeding register was taken away. This submission is not acceptable as copy of inquiry report dated 28.8.2018 shows that some complaint was made in July 2018 against sister of the first informant. Thus, the step was taken by the applicant like filing of proceeding in May 2018 and then F.I.R. was given and step was taken for disqualification of sister of applicant.

5) There is record produced by the learned counsel for first informant which is having title as Monthly Attendance Register of Members of Village Panchayat. This record is from the month of January 2017 to month of March 2018 and then for May 2018 and June 2018. There is no record produced only in respect of April 2018. There are page numbers to the photostate copy produced by the first informant and it shows that at page No. 15, there is entry of January 2018, at page No. 16 there is entry of February 2018, at page No. 17 there is entry of March 2018 and then there are page Nos. 2 and 3.

In ordinary course, the last entry in the previous register must have been of March 2018 and in April new register must have been opened. The submissions made and the record show that there is record of calling meeting on 2.4.2018 and there is another record of notice calling meeting on 2.5.2018 issued on 27.4.2018. Even the subject of the aforesaid incident was not taken in the subsequent meeting and that can be seen in the notice dated 27.4.2018. Further, the submissions made show that in the record of minutes of meeting, the signatures of the members, who were present were never obtained. All these circumstances create doubt about the proper compliance of procedure which needs to be followed in respect of the meeting. That aspect can be considered by the competent authority. The aforesaid circumstances show that there is some dispute between the applicant and ruling party of the aforesaid Village Panchayat. In view of the nature of dispute and the circumstance like delay caused in giving of the report, this Court holds that it will be abuse of process of law if the applicant is made to face the trial for aforesaid offence. In the result, the application is allowed. Relief is granted in terms of prayer clause 'B'. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/