

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4270 OF 2017

Sachin Nagorao Annapurve,
Age .. years, Occupation Service,
R/o 74-B, Zambad Estate, Shreya Nagar,
Aurangabad Tq. Dist. Aurangabad. .. Applicant

VS.

The State of Maharashtra. .. Respondent

Ms. N. R. Suryawanshi, Advocate for the applicant.
Mr. K. S. Patil, Additional Public Prosecutor for
respondent/ State.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI. JJ.**
DATE : 19-01-2018

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Present application has been filed by original accused for quashing First Information Report (FIR) and the entire proceedings in STC No. 828 of 2012 against him, by invoking powers of this Court under Sec. 482 of Code of Criminal Procedure.

2. Petitioner has come with a case that one Devanand Trimbakrao Patil is serving in Zilla Parishad, Jalna. He has filed FIR with

Jalna Police Station on 01-12-2011 stating that present petitioner and other 9 persons were absent when the training program was undertaken between 20-11-2011 to 27-11-2011 at Zilla Parishad, Jalna. The said training program was in respect of general elections scheduled to be held. It has been alleged that the present petitioner and other accused persons have failed to discharge their official duty, as they remained absent without taking prior permission. Therefore, the FIR was lodged invoking offence punishable under Sec. 31 of Maharashtra Municipal Council (Nagar Panchayat & Industrial Township) Act, 1965 and Sec. 134 of Representation of Peoples' Act, 1951. Offence vide Cr. No. 3068 of 2011 came to be registered on the basis of said FIR.

3. After completion of the investigation, charge sheet has been filed. Applicant had filed an application for his discharge at Exh.52. The said application came to be rejected by learned Chief Judicial Magistrate, Jalna on 22-12-2016. Petitioner had challenged the said order in Writ Petition No. 407 of 2017 before this Court; but the said petition has been withdrawn by petitioner on 23-3-2017.

4. Petitioner has contended that Block Development Officer had conducted inquiry against him and had opined that petitioner had not remained absent without reasonable cause. Accordingly a letter was issued by him to the informant on 02-12-2011. It was revealed that

petitioner was on medical leave from 01-11-2011. Notice was not served on the petitioner. There was reasonable ground for the accused to remain absent. Hence, the FIR filed against him is not justified. He has therefore, prayed for the quashing up of the FIR.

5. Application has been objected on behalf of respondent on the ground that the application filed by petitioner for discharge has been dismissed. Petitioner had remained absent at the time of training and it was deliberate. Petitioner has not done his official duty and therefore, the FIR has been rightly lodged.

6. Heard learned Advocate appearing for petitioner and learned APP for the Respondent.

7. It is to be noted from the papers before us that investigation has been completed and charge sheet has been filed in the Court. When material has been collected, then we will have to assess the same at this prima facie stage. The allegations in the FIR are that the present petitioner failed to make himself available for the training organized before the elections, though he was directed. It has been considered as dereliction of his duty. In order to constitute an offence, we must consider the intention behind the act or omission. Here also it is necessary to see whether present petitioner remained absent, intentionally. The

communication that was exchanged between the offices of the petitioner and Election Officer are required to be considered. It appears that petitioner was on medical leave since 01-11-2011 to 30-11-2011. The date on which he was supposed to remain present for training was 20-11-2011. Petitioner was not served with the intimation requiring him to remain present for the training prior to 20-11-2011 by his office. This can be clear seen from the letter dated 23-11-2011 given by Block Development Officer Class-1, Panchayat Samiti, Jalana. He had clearly stated that no action should be initiated against the petitioner as he was on medical leave. In spite of that, it appears that, without making any further inquiry, FIR was lodged on 01-12-2011. Another letter was issued by same authority on 02-12-2011. No doubt, before this letter reached Election Officer, already the offence was registered. However, we can see that the BDO was consistent in saying that petitioner was on medical leave and therefore, office had not served him the notice asking him to remain present for the training. Therefore, the absence of petitioner was not intentional. His such absence will not amount to offence, as contemplated in Sec. 31 of Municipal Council, Nagar Panchayat & Industrial Township Act, 1965 as well as Sec. 134 of Representation of People Act, 1951. It would be unjust to ask the petitioner to face the trial under the said circumstances. Hence, the FIR as against petitioner deserves to be quashed, so also the further proceedings before JMFC,

against him. We therefore proceed to pass following order:

ORDER

- 1) Criminal Application is hereby allowed.
- 2) First Information Report in Crime No. 3068/ 2011 registered with Jalna Police Station, Dist. Jalna against the Petitioner for the offence Sec. 31 of Municipal Council, Nagar Panchayat & Industrial Township Act, 1965 as well as Sec. 134 of Representation of People Act, 1951 is hereby quashed and set aside.
- 3) Consequently, the further proceedings in STC No. 828 of 2012 pending before Judicial Magistrate First Class, Jalna is also quashed and set aside as against Petitioner only.

**[SMT. VIBHA KANKANWADI]
JUDGE**

**[PRASANNA B. VARALE]
JUDGE**

vjg/-.