

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 768 OF 2017**

Jeetendra V. Hankare

....Petitioner.

Vs.

Miss. Priyanka Kamble and ors.

....Respondents.

Mr. S.D.Patil with Anusha Amin I/by Triyama Legal for the petitioner.  
Mr. D.S.Mhaispurkar with Mr. S.M.Mangaonkar for Respondent Nos.  
1 to 7.

Mr.A.R.Patil, APP. for the State.

**CORAM : A. S. GADKARI, J.****DATE : 27<sup>th</sup> AUGUST, 2018.****P.C.:-**

1. By the present petition under Article 226 and 227 of the Constitution of India the petitioner has impugned the Order dated 8.12.2015 passed below Exhibit-1 in CC No.329/SW/2013 by the learned Metropolitan Magistrate, 25<sup>th</sup> Court, Mazgaon at Sewree, Mumbai thereby dismissing the complaint of the petitioner under Section 203 of the Cr.P.C. and the Judgment and Order dated 3.12.2016 passed in Criminal Revision Application No.120 of 2016 by the Additional Sessions Judge, Greater Bombay dismissing the revision application.

2. Heard Mr. Patil, the learned counsel appearing for the

petitioner, the learned counsel for respondent Nos. 2 to 7 and the learned APP. for respondent No.8. Perused the record.

3. The record indicates that, the petitioner had filed a complaint before the learned Metropolitan Magistrate Sewree, Mumbai alleging that respondent Nos. 1 to 8 being the Government servants helped the original accused persons namely Pandurang Chavan, Ulhas Varpe, Rewati Varpe in dispossessing the petitioner from the tenanted premises. It is the allegation against the said respondents that they being the public servants did not perform their lawful duty and illegally helped the said three accused persons in committing the offence. The learned Magistrate issued directions and called for a report under Section 202(1) of the Cr.P.C. from the concerned police. The police submitted their report dated 3.2.2015 stating that, the dispute alleged by the petitioner is of civil nature.

4. At this stage, it is to be noted here, that the petitioner did not lead further evidence in support of its contention and contested the said report. The learned Magistrate after hearing the petitioner was pleased to dismiss the same under Section 203 of the Cr.P.C. As noted herein above, feeling aggrieved by the said dismissal of the complaint the petitioner had preferred Criminal Revision before the Sessions

Court for Greater Bombay. The revisional Court dismissed the said revision on the ground that, before instituting the proceedings in the Trial Court the petitioner did not obtain sanction under Section 197 of the Cr.P.C.

Mr. Patil, the learned counsel appearing for the petitioner submitted that, for lodgment of crime sanction under Section 197 was not mandatory. He further submitted that, it is the contention of the petitioner that, the respondents committed an offence not while performing their lawful duty but with a view to help the other accused persons and therefore, the question of obtaining sanction under Section 197 of Cr.P.C. does not arise. He further submitted that, though both the Courts below have dismissed the complaint, there are no concurrent findings recorded by them and therefore, interference by this Court under Article 227 of the Constitution of India is necessary,.

5. Per contra. Mr. Mhaispurkar, the learned counsel appearing for respondent Nos. 1 to 7 have vehemently opposed the petition and submitted that, the enquiry report submitted by the police under Section 202 of the Cr.P.C. is self eloquent and does not require any further comments. He further submitted that, only with a view to

harass the respondents the present complaint is filed by the petitioner. He therefore submitted that, the present petition may be dismissed in limine.

6. Perusal of record would indicate that, the police while submitting the report dated 3.2.2015 have categorically stated that, from inception they are of the view that no offence was committed by the co-accused namely Pandurang Chavan, Ulhas Varpe and Rewati Varpe as there was no document showing the right and interest of the petitioner over the room in dispute and therefore, the dispute between the petitioner and the respondents is of civil nature. It is to be further noted here that, the petitioner did not adduce further evidence to substantiate his claim even after the submission of the said report dated 3.2.2015 by the police. It appears from the record that, there are no reasonable grounds for proceeding against the respondents for commission of the offences alleged against them by the petitioner. It further appears that, there is substance in the contention of the learned counsel for respondent Nos. 1 to 7 that the proceedings adopted by the petitioner are only with a view to harass the them.

That the revisional Court has also taken into consideration the aspect of sanction under Section 197 of the Cr.P.C. while dismissing

the revision.

7. After perusing the entire record this Court is of the considered view that, both the Courts below have not committed any error either in law or on facts.

8. The Petition is accordingly rejected.

**(A.S. GADKARI, J.)**