

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION [APL] NO.326 OF 2017

[Deepak s/o Narayan Ingole .vs. The State of Maharashtra and one]

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Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

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Shri M.I. Dhatrak, Advocate for applicant,
Shri S.J. Kadu, APP for non-applicants.

CORAM : P.N. DESHMUKH AND
MRS. SWAPNA JOSHI, JJ.

DATED : SEPTEMBER 03, 2018.

Learned Additional Public Prosecutor has tendered affidavit-in-reply on record. Copy of the same is supplied to the learned counsel for the applicant.

This is an application for quashing Chargesheet no.166/2016 filed in Crime No.39/2016 registered for the offence punishable under Sections 167, 420, 468 and 471 of the Indian Penal Code which is registered as Regular Criminal Case No.71/2017. The main ground put forth for quashing the proceeding is non grant of sanction to prosecute the applicant, as required under Section 197 of the Code of Criminal Procedure amongst others, contending that alleged incident is, while applicant was working as Chief Officer of Nagar Parishad, Washim, who while working as such in his capacity as Chief Officer had exercised his powers under section 123 of the Maharashtra Municipals Council Nagar Panchayat and Industrial Townships Act, 1965 and effected the change of entry in the municipal record in Sheet No.129, City Survey No.31/63 of Sawta Mali Mandir property. It is alleged that earlier entry was deleted and the name of the 'Panch Committee Chandika Wes, Washim Shri Narayan Tukaram Jadhao

and 10 others' is replaced illegally. This entry was cancelled by applicant's successor. Thereafter, application made by brother of applicant namely Gajanan Ingole on 5.9.2012 to the applicant. As no action was taken, again an application was made on 28.10.2013 to the applicant for effecting correction in the entry. This application was posted for hearing before concerned officer and order came to be passed correcting the entry by restoring the old entry in the Municipal Record.

According to applicant, thereafter, due to certain political pressure or for such other reason some persons who were against Gajanan Ingole made application alleging thereby tampering of Municipal Record by the applicant, upon which, the Sub-Divisional Officer, Washim was directed to conduct enquiry and to submit his report. The enquiry was accordingly held, which according to applicant is held in illegal manner and with an undue haste prejudicially and its report came to be submitted by Sub-Divisional Officer which was accepted by the State Government, thereby directing registration of an offence against the applicant. It is the specific case of applicant that on investigation chargesheet is filed against applicant without obtaining sanction to prosecute the applicant. Admittedly, the cognizance of the said chargesheet is taken by the magistrate. The applicant has therefore approached this Court for quashing of chargesheet on the ground of prosecuting him without obtaining sanction as contemplated under Section 197 of the Code of Criminal Procedure.

Learned counsel for applicant, in support of application, has relied upon case of Sanjay s/o Laxman Kholapurkar .vs. State of Maharashtra, reported in (2017 (2) Mh.L.J. (Cri.) 493).

Learned Additional Public Prosecutor for respondents-State has not disputed fact of filing of chargesheet without obtaining prior

sanction to prosecute the applicant. Said fact is also stated in para 4 of affidavit-in-reply placed on record, wherein it is clearly stated that chargesheet no.166/2016 in the present crime is filed on 21.12.2016 which is registered as Regular Criminal Case No.71/2017 and no prior sanction is obtained before filing of the chargesheet before the magistrate. In view of admitted fact of not obtaining prior sanction and the law laid down by the Division Bench of this Court in the case of *Sanjay Kholapurkar (supra)*, we find that the application is liable to be allowed as the contention on behalf of applicant in the cited case was similar to the effect that learned Special Judge in spite of having no sanction to prosecute as required under Section 197 of the Code of Criminal Procedure took cognizance of alleged offences and another issue involved in the cited case was whether the question of sanction if necessary or not can arise at any stage of proceedings or at the stage of inception of case itself. This court, while considering the law on the subject by referring to various judgment held that the true test as to whether the accused is a public servant and was acting of purporting to act in the discharge of his official duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. In the application in hand, admittedly the act complained of is during the course of official duties performed by applicant.

In that view of the matter and considering the contents of FIR at its face value, we are of the considered view that the alleged offensive acts and conduct alleged against the applicant is reasonably connected with the performance of his official duties. We, therefore, found that before taking cognizance of the case to

consider if sanction to prosecute the applicant was obtained or not and in the absence of same, the learned trial Judge could not have taken cognizance of the case.

In view of facts as aforesaid, we find substance in the contentions of the applicant that prior sanction under Section 197 of the Code of Criminal Procedure is necessary and in the absence of prior sanction, taking of cognizance by the trial court, would not sustain in the eye of law. On this ground alone, application is liable to be allowed. Hence the following order :

Criminal Application is allowed. Chargesheet no.166/2016 filed by the non-applicants in Crime No.39/2016 registered for the offence punishable under Sections 167, 420, 468 and 471 of the Indian Penal Code which is registered as Regular Criminal Case No.71/2017 is quashed and set aside. However, we clarify that Investigating Officer if applies and the Competent Authority grants sanction to prosecute the applicant, the order passed by this Court would not come in the way of Investigating Agency for filing of fresh chargesheet.

JUDGE

JUDGE