

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.971 OF 2018

Harischandra s/o Shankarrao Giri,
Age 61 years, Occu. Pensioner,
R/o New Bank Colony, Parali Road,
Ambejogai, Tq. Amajogai,
District Beed.

... **PETITIONER**

Versus

The State of Maharashtra
Through Police Station
Gangakhed Tq. Gangkhed
District Parbhani.

... **RESPONDENT**

...

Advocate for Petitioner : Mr. Ramchandra J. Nirmal
A.P.P. for Respondent-State : Mr. B.V. Virdhe

...

CORAM : MANGESH S. PATIL, J.
DATE : 24.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is one of the accused from Crime No.109 of 2013 pending on the file of the learned J.M.F.C., Purna. He had filed an application under Section 239 of the Cr.P.C. seeking discharge. The application was

rejected and even the revision preferred by him was dismissed by the Sessions Court. Hence this Writ Petition.

3. In sum and substance the allegations are to the effect that the Government had floated a scheme for augmenting production of pulses. Pursuant to such scheme seeds and fertilizers were to be distributed to the agriculturists. As per the scheme the responsibility to supervise implementation of scheme and distribution of seeds and fertilizers vested in the petitioner who was the Taluka Agricultural Officer. He was to supervise and implement the scheme with the help of his sub-ordinates i.e. Agricultural Supervisors and Agricultural Assistants. According to the scheme a group of beneficiaries was to be formed and some villagers were to be appointed as heads of the groups of beneficiaries and it is through them that the seeds and fertilizers were supposed to be distributed according to the list of agriculturists prepared by them.

4. It is alleged that while implementing the scheme in respect of a village certain misdeeds had happened. A non existent person has been shown to be head of a group, some beneficiaries mentioned in the list were already dead, some persons in that list were not from the village etc. The informant then filed a complaint under Section 156 (3) of the Cr.P.C. The

Magistrate directed it to be investigated under that provision and accordingly the offence was registered. After completion of investigation the charge-sheet has been filed.

5. The learned advocate for the petitioner submits that the petitioner as the Taluka Agricultural Officer was merely expected to supervise implementation of the scheme which was to be implemented through his staff members which were 30 in number. In fact by issuing necessary administrative circular dated 25.05.2012 he had specifically warned all his sub-ordinates that the Circle Agricultural Officer and Agricultural Superintendent would be held responsible for any misdeed found to have occurred in the implementation of the scheme. Therefore, if at all his sub-ordinates have indulged in some misdeeds, he cannot be vicariously held responsible for the criminal act. There is absolutely no material on record to even *prima facie* suggest that the petitioner has actively indulged in the alleged forgery, cheating and misappropriation. Accepting the material filed with the charge-sheet at its face value the offence cannot be made out.

6. The learned advocate would further submit that since the petitioner is a public servant, the Magistrate could not have taken cognizance of the crime without there being any sanction under Section 197 of the Cr.PC.

The alleged act was purportedly committed in discharge of his official duties and it was imperative to have such sanction else the purpose of such provision would be frustrated. Both the Courts below have ignored all the aforementioned aspects and have refused to discharge him. The impugned orders are not sustainable in law and may be quashed and set aside.

7. The learned A.P.P. opposes the Writ Petition. He submits that considering the enormity of the crime and the *modus operandi*, the offence could not have been committed by an individual or two. All the duty holders must have shared an intention to indulge in such crime. Without connivance of all the accused including the present petitioner the offence could not have been committed. Therefore it would not be proper to discharge the petitioner at this stage and an opportunity needs to be extended to the prosecution to substantiate the charge. The offence is serious and is regarding misappropriation, forgery and cheating to siphon off the Government money. The matter being serious, the petitioner is liable to face the consequences. As far as sanction is concerned, though the offence has been committed in a scheme to be supervised by the petitioner in his official capacity, the crime cannot be said to have any direct nexus with the discharge of his duties requiring any protection under Section 197 of the Cr.P.C.

8. I have carefully gone through the papers. One need not repeat the nature of the crime and *modus operandi* being alleged as mentioned herein-above. *Prima facie*, the petitioner was the Taluka Agricultural Officer. A scheme of distribution for seeds and fertilizers to the agriculturists was to be implemented through him. A group of farmers was to be formed comprising 20 to 25 farmers one of them was to head that group and it is found that at least in one case the head stated to have been appointed is a fictitious person.

9. It is further found during the investigation that some farmers who were already dead were shown as beneficiaries. There are also instances where the persons which do not hail from the village have been included in the list of villagers.

10. One can easily comprehend as to how and in what manner the alleged crime must have taken place. The modus is quite apparent. If that is borne in mind, there is no manner of doubt that the crime must have been committed by various duty holders in connivance. It could not have been possible for an individual to indulge in such misconduct. It must have been a handiwork of several officers, persons and the petitioner being the person holding a post of Taluka Agricultural Officer through whom the scheme was to be implemented is also involved. If and to what extent he was responsible

and can be held guilty is a matter of evidence. It would be appropriate to allow the trial to proceed extending an opportunity to the prosecution to substantiate the charge. It cannot be said that the charge is ground less so that the petitioner can be discharged under Section 239 of the Cr.P.C.

11. So far as the want of sanction under Section 197 of the Cr.P.C. is concerned, it would be better left to be decided by the trial Court at an appropriate stage. Considering the aforementioned facts and circumstances, absence of such sanction under Section 197 of the Cr.P.C. cannot be said to be a good ground to discharge the petitioner under Section 239 of the Cr.P.C.

12. Both the Courts have considered all the aforementioned aspects in the proper perspective and have come to a reasonably plausible conclusion. I do not find sufficient and cogent reasons to intervene.

13. The Writ Petition is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]