

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

CRIMINAL WRIT PETITION NO.1302 OF 2016

Nagraj Janardhan Patil,
Age – 65 yrs., Occ. - Farmer,
R/o. 182, Bhikamchand Jain Nagar,
Jalgaon (M. No.9175888777)

... PETITIONER

VERSUS

1. The State of Maharashtra
through P.I. City Police Station, Jalgaon,

2. S. Jaykumar, S.P. jalgaon.

... RESPONDENTS

...

Party in person : Mr. Nagraj Janardhan Patil
APP for Respondent no. 1-State : Mr. A.P. Basarkar

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 10.10.2019

Pronounced on : 06.11.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the respondent. At the request of both the sides the matter is heard finally at the stage of admission.

2. The facts leading to the filing of this Writ Petition under Article 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure are to following effect :

(a) The petitioner is an ex-employee of a Co-operative Milk Society.

He filed a complaint under Section 190 of the Code of Criminal Procedure before the Magistrate against 115 persons with the allegations that National Dairy Development Board, Anand, Gujrat was illegally appointed as Administrator over the Milk Society since the year 1995. The provisions of Maharashtra Co-operative Societies Act were flouted. There was no agreement. None was provided to him in spite of his request. All these persons who were Ministers, persons heading the board and the members of the Milk Society had committed misappropriation and criminal breach of trust by indulging in forgery and have siphoned of crores of rupees of the Milk Society. So far as the police personnel are concerned he alleged that they had failed to act promptly upon the complaint lodged by him. So far as the respondent no.2 herein is concerned, it was alleged that he was then officiating as Superintendent of Police at Jalgaon and in spite of the petitioner having submitted a complaint to him, he failed to act upon it.

- (b) The learned Chief Judicial Magistrate Jalgaon by the order dated 03.10.2013 directed an investigation to be carried out under Section 156(3) of the Code of Criminal Procedure.
- (c) The respondents challenged the order by preferring Criminal

Revision Application No.282/2013 before the Sessions Court Jalgaon. By the impugned order, the learned Additional Sessions Judge allowed the revision to the extent of the respondent no.2 and quashed and set aside the order passed by the learned CJM to that extent. Hence this Writ Petition.

3. It is necessary to observe that apart from the respondent no.2 herein, the many other accused had also preferred similar revisions impugning the order passed by the learned CJM. However, the learned Additional Sessions Judge dismissed those revisions, Criminal Revision Application No.323/2013 and Criminal Revision Application No.170/2014, by the judgment and order dated 25.01.2017 and 07.01.2017 respectively.

4. The petitioner who appears in person submitted that there was enough material before the learned CJM to demonstrate that the respondent no.2 who was then Superintendent of Police had received the complaint sent by the petitioner but had failed to take cognizance. Ignoring such allegations and the material in support thereof the learned Additional Sessions Judge illegally quashed and set aside the order passed by the learned CJM to the extent of the respondent no.2. There was enough material before the learned Additional Sessions Judge demonstrating that he had already applied to the State

Government seeking sanction to prosecute the respondent no.2 under Section 197 of the Code of Criminal Procedure. The learned Additional Sessions Judge failed to notice that in spite of his such request, the State had not refused permission and had not communicated anything to him and therefore it ought to have been held that there was deemed sanction. He further submitted that in fact it was a case of fraud and misappropriation and therefore it could not have been said that the offence was committed by the respondent no.2 in discharge of his official duties and therefore there was no necessity of any sanction under Section 197 of the Code of Criminal Procedure.

5. The petitioner further submitted that even the prosecutor who represented the respondent no.2 ought not to have represented him while representing the State simultaneously and the revisional court ought not to have allowed him to do so.

6. The learned APP submitted by referring to the affidavit of the respondent no.2 that the only allegation against him was about having failed to act upon the complaint filed by the petitioner. There were no other allegations about he having played any role in the alleged misappropriation or forgery. Thus, such omission to act would clearly demonstrate that the allegations were in respect of an offence which was committed by him in discharge of his official duties or

purported discharge of his official duties. Therefore he could not have been prosecuted without previous sanction under Section 197 of the Code of Criminal Procedure in view of the provisions of Section 190 and 156(3) of the Code of Criminal Procedure.

7. Independently, the learned APP further submitted that the respondent no.2 did receive the complaint/application of the petitioner dated 24.08.2012. He did take cognizance of the allegations and had issued necessary directions to the concern police station by forwarding it on 01.09.2012. The inquiry was assigned to PSI, B.O. Sonavane. The petitioner was called upon to co-operate in carrying out the inquiry but he intentionally avoided even to record his statement and to provide any evidence. He failed to turn up and therefore there was no alternative but to dispose of the complaint/application. The petitioner failed to disclose these facts before the learned CJM. After considering all these factual and legal aspects the learned Additional Sessions Judge rightly interfered in exercise of the powers under Section 397 of the Code of Criminal Procedure and has rightly quashed and set aside the order passed by the learned CJM *qua* the respondent no.2 and there is no apparent illegality.

8. I have carefully gone through the papers. As is observed above, the order passed by the learned CJM was also impugned by the

other proposed accused but the revisions preferred by them have been dismissed by the learned Additional Sessions Judge. Consequently, it would be sufficient for us now to appreciate the scenario from the perspective of the respondent no.2 alone.

9. Perusal of the order passed by the learned CJM clearly shows that the learned CJM had not at all considered the factual and legal aspects *qua* the respondent no.2. He had failed to comprehend any specific and precise role attributable to the respondent no.2. In fact, going by the allegation in the complaint, the only role attributed to respondent no.2 who was arrayed as proposed accused no.115 is to the effect that being a police officer instead of taking action against the main accused he had omitted to exercise the powers and allowed the misappropriation to be pushed under carpet. It is thus apparent that there are no allegations against the respondent no.2 about he himself having indulged in the alleged misappropriation, criminal breach of trust, cheating, forgery etc.

10. If such is the state of affairs, the allegation about having failed to discharge the duty as the Superintendent of Police can be said to be an act of omission committed by him in discharge of his official duty. If that be so, it was imperative for the petitioner to have obtained sanction under Section 197 of the Code of Criminal

Procedure but the learned CJM has failed to consider this aspect. Had there been allegations of misappropriation, criminal breach of trust etc against the respondent no.2, perhaps, it could have been said that the offence was not committed in purported discharge of his official duties. That being not the case, the learned Chief Judicial Magistrate ought to have considered such statutory bar which goes to the root of the jurisdiction to be exercised under Section 156 of the Code of Criminal Procedure. Thus the learned CJM had clearly failed to appreciate such factual and legal aspects while issuing direction to register crime even against the respondent no.2.

11. If such was the case, no fault can be found with the learned Additional Sessions Judge in exercising the powers of revision under Section 397 of the Code of Criminal Procedure.

12. Independent of the question of want of under Section 197 of the Code of Criminal Procedure, the learned Additional Sessions Judge has also considered the provisions of Section 161 of the Maharashtra Police Act which grants immunity to the police officers from any civil or criminal action in respect of anything done or omitted to be done under colour of his duty or in excess of his authority unless the prosecution or suit was instituted within 6 months. The learned Additional Sessions Judge clearly pointed out that since the complaint

in the matter in hand was lodged beyond the period of 6 months, even for that reason the Magistrate could not have directed investigation under Section 156 (3) of the Code of Criminal Procedure.

13. Apart from the above state of affairs the learned Additional Sessions Judge has also clearly referred to the material which is impeccable, in the form of direction issued by the respondent no.2 by taking cognizance of the complaint sent by the petitioner to carry out investigation. If such is the state of affairs, even on facts, there was no material to show that the respondent no.2 had in fact failed to exercise the powers vested in him in forwarding the complaint sent by the petitioner to his subordinate for carrying out investigation.

14. Considering all the aforementioned facts and circumstances, I find no apparent illegality or perversity in the order passed by the learned Additional Sessions Judge in exercise the powers under Section 397 of the Code of Criminal Procedure in quashing and setting aside the order passed by the learned CJM to the extent of the respondent no.2. There is no substance in the Writ Petition.

15. The Writ Petition is dismissed. The Rule is discharge.

(MANGESH S. PATIL, J.)