

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

CRIMINAL WRIT PETITION NO.1515 OF 2017

Govardhan S/o Sudamsingh Chandwade,
Age 39 years, Occ. Agri. & Social Service,
R/o Zari-Wadgaon, Post Bodkha,
Tq. Khultabad, Dist. Aurangabad. ... **Petitioner.**

Versus

1. The State of Maharashtra,
Through Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Secretary,
Department of Employment Guaranty,
Mantralaya, Mumbai-32.
3. The Director General of Police,
The Office of the Director General of Police,
Mumbai-32.
4. The Special Inspector General of Police,
Aurangabad Range,
Near Baba Petrol Pump,
Aurangabad.
5. The Superintendent of Police,
Rural Division, Aurangabad.
6. The Collector,
Collector Office at Aurangabad.
7. The Police Inspector,
Police Station Waluj,
Tq. Khultabad, Dist. Aurangabad. ... **Respondents.**

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Mr. K.D.Jadhav, Advocate for Petitioner.
Mr. P.G.Borade, APP for Respondents-State.

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 2nd May, 2019

ORAL JUDGMENT (PER T.V.NALAWADE J.) :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. The petitioner has given report to Khultabad Police Station dated 22.11.2016 and he has made allegations about the irregularities noticed in for execution of the work of nala bandh, cement bandh, bunding work. He has made allegations that the Contractor, Gram Sevak, Sarpanch and also the employees of the post office had joined hands and by creating false record in MNERGA Scheme, they have misappropriated the amount of more than Rupees One Crore. There is the report prepared by Deputy Engineer submitted to Deputy Collector Aurangabad dated 23.07.2013 showing that there were such irregularities. The names of deceased persons were shown in muster roll, false job cards were prepared and amounts were distributed in the names of deceased. There are allegations that some persons had not turned up for work but the payments were shown to be made to them, even when they have not received the payment.

There are allegations that very old persons who have crossed the age of 90 years were also shown in the muster roll and job cards were prepared and that way also without making payment to them the amount was misappropriated. The submissions made show that after detecting the irregularities, some employees like Gram Sevak were suspended. As no crime was registered, present applicant had approached police and he had given the aforesaid report dated 22.11.2016. Subsequent to that also he gave many reports, but crime was not registered. Surprisingly, in communication dated 04.11.2017 PSI of concerned Police Station informed that as the petition was filed by the present petitioner in High Court, his application given for registration of crime was disposed of.

3. Submission was also made for respondents-State that there are instructions from Superior Officers not to register the crime unless the concerned department makes complaint about such misappropriation. This is highly objectionable act of the so called Superior Officers. They cannot go beyond the wording of Section 154 of Cr.P.C. In view of direction given by the Apex Court in the case of ***Lalita Kumari Vs. Government of U.P. ; AIR 2014 SC 187,***

there is no other option before the PSO than to register the crime when the allegations make out cognizable offence. The P.I. is present before this Court and has submitted that he had no role in the communication dated 04.11.2017.

4. The facts of the present matter show that even when there is more than sufficient material, and inquiry was already conducted, the concerned police have not registered the crime. The superior officer of police has no power at all to give directions to the Police Station to see that the crime is registered only when the concerned Department makes complaint. Every citizen has a right to approach the police if cognizable offence is committed and when he has reliable information about the cognizable offence. In that case, PSO is duty bound to register the crime and take further action. The PSO is not bound by the inquiry which is conducted by the department and the PSO and the concerned Police Station is expected to make investigation independently and even if the concerned department is not taking action, police can take action if there is a material to make out the cognizable offences.

5. In the present matter, this court expects that action is taken against the PSI who made the communication dated

04.11.2017 with the present petitioner. It is improper on his part to dispose of the complaint on the reason that the complainant had approached this Court. An appropriate action needs to be taken against him otherwise the things will not improve. A copy of this order is to be sent to the so called superior officers by the Police Station as submission of the aforesaid nature was made before this Court in the present proceeding.

6. In the result, the petition is allowed. The relief is granted in terms of prayer clause-B only. Rule made absolute in those terms. The petition is disposed of.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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vmk/-