

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

CRIMINAL WRIT PETITION NO.1582 OF 2016

Natha Vishwanath Ghule,
Age 68 years, Occu. Pensioner,
R/o Maka, Taluka Newasa,
District Ahmednagar.

... PETITIONER

VERSUS

1] The State of Maharashtra,
through Kotwali Police Station,
Ahmednagar, Taluka District Ahmednagar.

2] Shankarrao Vitthalrao Raut,
Age 65 years, Occu. Nil,
R/o. Surya, 104, Government Quarters,
Near Govindpura Naka, Ahmednagar.

... RESPONDENTS

...

Advocate for Petitioner : Mr. S. S. Jadhavar
Advocate for Respondent/State : Mr. B.V. Virdhe
Advocate for Respondent no.2 : Mr. N. B. narwade

...

CRIMINAL WRIT PETITION NO.1699 OF 2016

Chandrakant s/o Laxman Mhaske,
Age : 55 years, Occ. Service -
Police Inspector, CID (Crime),
Pashan, Pune

... PETITIONER
(Ori. Accused No.7)

VERSUS

1] The State of Maharashtra,
(Copy served on Public Prosecutor,
High Court Bench at Aurangabad)

2] Shankarrao Vitthalrao Raut,
Age 63 years, Occu. Pensioner,

R/o. Vijaya Residency, Beside
Chhaya Talkies, Chitale Road,
Ahmednagar.

... RESPONDENTS
(No.2 Ori. Complainant)

WITH

CRIMINAL WRIT PETITION NO.1700 OF 2016

Pramod s/o Popat Pawase
Age : 57 years, Occu. Service -
Assistant Police Sub Inspector,
Police Head Quarters, Ahmednagar

... PETITIONER
(Ori. Accused No.4)

VERSUS

1] The State of Maharashtra,
(Copy served on Public Prosecutor,
High Court Bench at Aurangabad)

2] Shankarrao Vitthalrao Raut,
Age 63 years, Occu. Pensioner,
R/o. Vijaya Residency, Beside
Chhaya Talkies, Chitale Road,
Ahmednagar.

... RESPONDENTS
(No.2 Ori. Complainant)

...

Advocate for Petitioners : Mr. R. N. Chavan
Advocate for Respondent/State : Mr. B.V. Virdhe
Advocate for Respondent no.2 : Mr. N. B. narwade

...

AND

CRIMINAL APPLICATION NO.6688 OF 2016

Suresh Shripatirao Bhamare,
Age : 65 years, Occu. Pensioner & Agriculture,
R/o 'Saptsai', Sukhdham Society, Kidke Colony,
Opposite Saint Francis School, Nashik - 2

... PETITIONER
[Orig. Accused No.9]

VERSUS

1] Shankarrao Vitthalrao Raut,
Age 65 years, Occu. Pensioner,

R/o. 'Surya', 104, Government Quarters,
DSP Chowk, Near Govindpura Naka,
Ahmednagar. Mobile No.9850153129.

- 2] The State of Maharashtra
(Copy served on Public Prosecutor,
High Court Bench at Aurangabad) **... RESPONDENTS**
[Res No.1 Orig. Complainant]

...
Advocate for Petitioner : Mr. Joydeep Chatterji
Advocate for Respondent no.1 : Mr. N. B. narwade
Advocate for Respondent/State : Mr. B.V. Virdhe

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 26.08.2019

Pronounced on : 04.10.2019

JUDGMENT :

Heard the learned advocates of all the four petitioners.
Rule. Rule is made returnable forthwith. Learned APP waives service for the respondent State in all these petitions whereas advocate Mr. N.B. Narwade waives service for the respondent complainant. On the request of both the sides, the matters are heard finally at the stage of admission and are being disposed of by this common judgment.

2. The petitioners are the accused nos. 10, 7, 4 and 9 from the complaint bearing Criminal Case No.572/2008 filed by the respondent complainant in the Court of Magistrate at Ahmednagar. In sum and substance the allegations are to the effect that the son of the

respondent complainant went missing in the evening of 30.06.2001. He went to the Police Station concerned and attempted to lodge a missing report but he was kept waiting. His complaint was destroyed. On their own the police machinery registered a missing complaint on next day. All the while he was suspecting about his son having been murdered. The dead body was found near a railway track in the next morning. In spite of existence of number of circumstances pointing to the fact that it was a murder the police machinery had acted hand in gloves with the main culprits and at every moment made attempt to screen the offenders and *mala fide* did not discharge their duties either as was expected of them or in utter disregard to the directions of the superior. Giving details he filed the complaint for various offences against the petitioners and the other police officers, covered by Chapter IX of the Indian Penal Code like 166, 167, 201, 218, 211 read with Section 34 of the Indian Penal Code and Section 145 of the Mumbai Police Act.

3. The learned Magistrate directed an inquiry under Section 202 of the Code of Criminal Procedure. After receipt of a positive report, by the impugned order dated 06.01.2014 the learned Magistrate directed the process to be issued against the petitioners and few other accused but refused to issue process against some of the accused. The petitioners preferred separate revisions challenging the

order of issuance of process before the Sessions Court. By the impugned separate orders, the learned Additional Sessions Judge dismissed the revisions. Hence these petitions.

4. The learned advocates submitted that accepting the allegations in the complaint at their face value, all the necessary ingredients for constituting the offence cannot be made out. No specific and precise role is attributable to them. They are being falsely involved with some ulterior motive. Assuming that there is some dereliction of duties on the part of the petitioners still, there is nothing on the record to demonstrate that such dereliction was with some intent or *means rea* to screen the main offenders or to cause injury to the respondent complainant. Applying the principles in the case of **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Ors.; AIR 1976 SC 1947**, the order of the Magistrate issuing process deserved to be quashed and set aside but the learned Additional Sessions Judge has not borne in mind these principles and has assumed about Magistrate having passed the impugned order after application of mind.

5. The learned advocates also submitted that the alleged acts which according to the respondent complainant constitutes the offences for which the process has been issued have been done by the

petitioners in discharge of their official duties or purported discharge of official duties within the meaning of Section 197 of the Code of Criminal Procedure. Therefore, the complaint itself is not maintainable for want of sanction to prosecute. In support of their submission, they placed reliance on the decision of the Supreme Court in the Case of **D.T. Viruprakshappa Vs. C. Subhash ; (2015) 12 Supreme Court Cases 231, Raghunath Ananth Govilkar Vs. State of Maharashtra and Ors.; (2009) 1 SCC (Cri) 130 and State of Maharashtra Vs. Devahari Devasing Pawar and Ors. ; AIR 2008 Supreme Court 1375** and various decisions of coordinate Benches of this Court. The learned advocates submit that the principle of law laid down in these decisions were not at all considered by the two courts below. The issue regarding want of sanction can be raised even at the inception and the process can be quashed and set aside on that count and it is not necessary that it should be left to be decided during the trial. The learned Additional Sessions Judge has clearly erred in refusing to consider it at the stage of inception. Thus the order of issuance of process passed by the Magistrate and the orders dismissing the revisions are perverse and capricious should be interfered with and reversed.

6. The learned APP and the learned advocate for the respondent complainant support both the orders. They submit that at

the stage of issuance of process, the Magistrate is only expected to apply his mind to the facts and circumstances and to reach a plausible decision as to if there is sufficient basis to proceed against the accused. It is not expected that he should scrutinize the material threadbare.

7. Considering the reports submitted under Section 202 of the Code of Criminal Procedure, by giving details as to the role attributable to each of the accused including the present petitioners that the learned Magistrate had directed the process to be issued. There is nothing to demonstrate that even on an independent scrutiny one cannot comprehend the role attributable to the petitioners. The order directing the process to be issued cannot be said to be either arbitrary capricious or perverse so that the Revisional Court could have intervened by invoking limited power under Section 397 of the Code of Criminal Procedure. The power of this Court under the Writ Jurisdiction would be still limited. Unless the orders passed by the courts below could be demonstrated to be grossly erroneous and would result in miscarriage of justice, this Court is not expected to intervene by resorting to reapprciation of the material.

8. The learned APP and the learned advocate for the respondent complainant further submitted that as far as absence of sanction under Section 197 of Code of Criminal Procedure is

concerned, though it can be raised at any stage of the proceeding, it is not that in each and every case it could be decided at the inception. It would depend upon the facts and circumstances of each case. Bearing in mind this principle, since in the matter before hand, going by the allegations being levelled, it would be difficult to decide the issue at such preliminary stage and it will have to be examined as to what extent the alleged offences can be said to have been committed in discharge of or purported discharge of the official duties of the petitioners to either to carry out the investigation or to supervise it. Precisely for this reason, the learned Additional Sessions Judge has in the impugned orders specifically mentioned that in the peculiar facts and circumstances the issue cannot be decided at this stage and would be open for decision during the trial.

9. I have carefully gone through the papers. Since the order of issuance of process was challenged in revision unsuccessfully, one needs to bear in mind the limitations of this Court in exercising the Writ Jurisdiction.

10. At the stage of issuance of process, as the wording of Section 204 of the Code of Criminal Procedure demonstrates, a Magistrate is merely called upon to form an opinion that there is sufficient ground for proceeding. Therefore, scope of the inquiry is

very limited in ascertaining as to if there was sufficient material before the Magistrate, to form an opinion for proceeding. Obviously such opinion is expected to be based on sum objective analysis and not a subjectively one. Bearing in mind these principles if one examines the order passed by the Magistrate the first thing that needs to be noted is that it is not that the process was directed to be issued at once but was preceded by an earlier direction to carry out investigation under Section 202 of the Code of Criminal Procedure. Pursuant to such earlier direction, a report was submitted to him (Ex. 27 in the file of the Magistrate dated 07.09.2013). It is after going through this report which clearly and in some detail attributed specific and precise role to each of the accused including the present petitioners that the Magistrate has once again verified the role attributable to the petitioners.

11. So far as accused No.10 is concerned the report under Section 202 reads that in spite of the investigating Officer having called upon him to face the inquiry by contacting on his phone number he did not turn up. Even accused no.9 did not turn up to face the inquiry. True it is that from this circumstance *per se* no inference can be drawn, but this is indeed one of the circumstances against these two petitioners which reflects their conduct.

12. As far as accused no. 4 is concerned the report reads that he had accompanied the co-accused who was an Assistant Sub Inspector who was asked to conduct inquiry in respect of the Accidental Death Case No.41/2001 and had accompanied him to the spot where the dead body was found. He specifically mentioned that the dead body was handed over to him for being taken to the Civil Hospital. After postmortem examination he had handed over the dead body and the articles found on it to the relatives of the deceased. The clothes on the person of the deceased were kept by the sweeper outside the mortuary and since the relatives of the deceased had not demanded the clothes he did not bring the clothes to the police station. One cannot comprehend as to why the clothes of the deceased were not seized and also as to how merely because the relatives did not demand clothes back, the clothes were allowed to go vanish.

13. As far as accused no.7 is concerned during the inquiry he stated about being in charge of Kotwali Police Station as a Sub Inspector at the relevant time. He submitted that the report in respect of AD Case No.41/2001 submitted under Section 174 by the co-accused was received by him. In spite of having repeatedly called the respondent complainant and his relatives they did not turn up to him and that he had never threatened him. He further stated about having collected report from the Medical Officer who opined that the deceased

had died due to dash given by train.

14. It is thus apparent that accused no.4 has not seized the clothes and the articles found on the person of the deceased and allowed such things to go vanish. Accused no.7 to whom the report was submitted also ignored this vital aspect. Though the dead body was found by the side of the railway track, no inquiry was made with any railway staff particularly the Gangman and the Train Drivers. Besides though according to petitioner accused no. 7 the respondent complainant and his relatives had not turned up for the inquiry, still he submitted a report about the deceased having committed suicide without their being any cogent material.

15. So far as accused no.9 is concerned it was found in the report under Section 202 that at the material time he was in charge as Police Inspector of Kotwali Police Station within the limit of which the incident had occurred. On a grievance being made by the respondent complainant with the Superintendent of Police the latter had sent a letter dated 19.07.2001 to the petitioner-accused no.9 specifically directing him to inquire into and investigate on specific points detailed therein (Ex. R-1). In spite of such specific and precise directions to carry out the investigation objectively, this petitioner-accused no.9 has not carried out the investigation as was expected. He was specifically

asked to carry out the investigation and if necessary to examine the witnesses still he never obeyed these directions and no attempt was made to recover the bicycle, chapals and clothes of the deceased.

16. As far as the petitioner-accused no.10 is concerned it was found that at the material time he was Deputy Superintendent of Police and was expected to have supervision over the work of Petitioner-accused no.9 who was expected to submit the report as per the directions of the Superintendent of Police. However, even he did not pay attention and failed to objectively assist the investigation carried out by accused no.9 and allowed submission of the report concluding that it was a suicide and submitted such a summary for approval before the Sub Divisional Magistrate without even making any inquiry with the respondent complainant.

17. It is after going through such a report received under Section 202 of the Code of Criminal Procedure that by the impugned order the learned Magistrate took cognizance under Section 204 of the Code of Criminal Procedure and directed the process to be issued. By no stretch of imagination the order can be said to be perverse, arbitrary or capricious without which the learned Additional Sessions Judge could not have intervened under the powers of revision under Section 397 of the Code of Criminal Procedure.

18. True it is that the learned Additional Sessions Judge has not meticulously examined the aforementioned aspects but still he has clearly gone through the record and has come to a plausible conclusion confirming the order passed by the learned Magistrate.

19. So far as want of sanction under Section 197 of the Code of Criminal Procedure is concerned, true it is, as has been laid down in the case of D.T. Virupakshappa (*supra*) and several other decisions that the question of sanction may arise at any stage of the proceeding and in a given case it may arise even at the stage of inception. However, as has been correctly noticed and observed by the learned Additional Sessions Judge in the impugned orders, taking into account the peculiar allegations being attributed against the petitioners, the issue whether the alleged offences could be said to have been committed in discharge of their official duties can only be decided during the course of the trial as it would depend upon several other variables. The learned Additional Sessions Judge was conscious enough to specifically observe that the issue needs to be kept open for a final decision at the end of the trial. The learned Additional Sessions Judge has not straight away endorsed the conclusion of the learned Magistrate in the impugned order that the offence was not committed in discharge of the official duty and sanction was not necessary. The observation and the conclusion of the learned Additional Sessions Judge in the impugned

judgment keeping this issue open is quite reasonable and expects the Magistrate to adopt correct course of action.

20. To sum up, the observations and the conclusions drawn herein above would clearly demonstrate that the case of the petitioners accused is not covered by the situations laid down in the case of Smt. Nagawwa (supra) so that the order of issuance of process can be set aside and the complaint can be dismissed. There is no substance in any of the Writ Petitions.

21. The Writ Petitions are dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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