

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

CRIMINAL WRIT PETITION NO. 1773 OF 2018

Anil s/o Haribhau Samudre,
Age 41 years, Occ. Labour,
R/o. Milindnagar, Ambejogai,
Tq. Ambejogai, Dist. Beed.

... **Petitioner.**

VERSUS

1) The State of Maharashtra.

2) Damodhar Waghmare,
Age 40 years, Occ. Service as
PSI, r/o. Having his office at
Ambejogai (City), Police Station
at Ambejogai, Tq. Ambejogai,
District Beed.

3) Surendra Gandam,
Age 51 years, Occ. Service as Police
Inspector, R/o. Having his office at
Ambejogai (City) Police Station
at Ambejogai, Tq. Ambejogai,
District Beed.

... **Respondents.**

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Mr. A.A. Mukhedkar, Advocate for the Petitioner.

Mr. A.P. Basarkar, APP for the respondent No. 1.

Mr. S.B. Solanke, Advocate for the respondent No. 2.

CORAM : MANGESH S. PATIL, J.

DATE : 11/10/2019

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Issue notice to the respondents. Learned APP waives service for respondent No. 1.

Learned advocate Mr. Solanke waives notice for the respondent No. 2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is aggrieved by the order passed by the Magistrate refusing to direct investigation under section 156 (3) of the Code of Criminal Procedure qua the respondents No. 2 and 3 whom he had arrayed as accused Nos. 9 and 10, and the dismissal of his revision by the learned Additional Sessions Judge by the impugned judgment and order.

3. The petitioner filed the complaint alleging that there was a rampant misappropriation in respect of the scholarships and other fees receivable from the Nursing students by the College at Ambejogai. The accused Nos. 1 to 8, who are the Principal and other staff members of that college, have committed criminal breach of trust and misappropriation.

4. So far as the respondent Nos. 2 and 3 are concerned he alleged that they are Police Officers and in spite of he having made grievance to them about the alleged misappropriation they refused to take cognizance of his grievance.

5. The learned Magistrate by his elaborate order directed

investigation only against accused Nos. 1 to 8 but no such order was passed against the respondent Nos. 2 and 3. The revision preferred by the petitioner has also been dismissed.

6. The learned advocate for the petitioner submits that prima facie there is material to show that the respondent Nos. 2 and 3 had omitted to take cognizance of the grievance put forth by the petitioner and have thus committed an offence punishable under section 166A of the Indian Penal Code and also the offence punishable under section 178 and 179 of the Indian Penal Code. The Magistrate ought to have directed such investigation even against them. There was enough material before the Magistrate to show that the petitioner was making the grievance and filing written complaints and still they were reluctant to set the criminal law in motion.

7. The learned advocate would further submit that the petitioner had repeatedly made grievance with the Superiors of the respondents No. 2 and 3 and still the criminal law was not set in motion and therefore it was imperative for the Magistrate to have issued direction even against them. The learned Additional Sessions Judge has overlooked all these aspects and has summarily dismissed the revision causing serious prejudice to the petitioner.

8. The learned APP and the learned advocate for the respondent No. 2 submit that primarily the Magistrate has refused to issue direction in view of the Proviso added to Section 156 of the Code of Criminal Procedure which prohibits any such direction to be issued against a Public Servant when the offence is committed in discharge of his official duty. Accepting the allegations at their face value, it has been alleged that whenever the petitioner approached them they simply kept on promising to initiate a proceeding but failed to initiate it. Such omission would at the most be an offence committed while discharging the official duties and therefore a sanction under section 197 of the Code of Criminal Procedure was a condition precedent for issuing a direction and in the absence of which the Magistrate has rightly refused to direct any investigation as against them. The learned Additional Sessions Judge has also concurred with the observations and conclusions drawn by the Magistrate. There is no apparent illegality and perversity which can be interfered with by invoking the writ jurisdiction.

9. Needless to state that going by the allegations in the complaint, what is being attributed against the respondents No. 2 and 3 is that being the Police Officers it was their duty to set the criminal law in motion and to carry out the investigation by taking cognizance

of the complaint made by the petitioner. If that be so, such omission can only be prima faice said to be an offence which has been committed while discharging their official duties or purported discharge of the official duties.

10. If this is so, by virtue of Proviso to Section 156 of the Code of Criminal Procedure, the Magistrate could not have issued any direction under Sub Section 3 of Section 156 of the Code of Criminal Procedure in the absence of sanction under section 197 of the Code of Criminal Procedure. For this reason alone the Magistrate has rightly refused to issue any direction.

11. When a query was put to the learned advocate for the petitioner as to if the petitioner had even applied for sanction to prosecute the respondents No. 2 and 3 as is contemplated under section 197 of the Code of Criminal Procedure the learned advocate was not fair enough to reply in either affirmative or negative. He simply kept on pointing out that communications were made to the Superiors of the respondents No. 2 and 3 for their inaction. The fact remains that there was no record before the Magistrate or the Revisional Court to show that there was any compliance made with such mandate of the Law. In the absence of which I find no apparent illegality committed by the two Courts below in refusing to issue any

direction under section 156(3) of the Code of Criminal Procedure against the respondents No. 2 and 3.

12. The Criminal Writ Petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

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