

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5259 of 2017
(modified as per order dated 23rd July 2019)**

Subhash Damodar Annamwar & ors .. Petitioners
Versus
The State of Maharashtra & ors .. Respondents

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Mr.Ganesh S. Vaidya for the petitioners.
Mr.Deepak Thakare, P.P with Mr.K.V. Saste, APP for the State.
Mr.Chaitanya A. Malgaonkar, Khushali Padalia i/b Malgaonkar
Shah & Co. for respondent no.2.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 18th JUNE, 2019

P.C:-

1 Heard learned counsel for the petitioner,
respondent no.2 and learned Public Prosecutor for the State.

2 Petition is filed for quashing and setting aside the
MECR No.2 of 2017 registered with Dadar Police Station at the
instance of respondent no.2 for an offence punishable under
Sections 379, 411, 414, 506 read with Section 120B of the
Cr.P.C.

3 The respondent no.2 approached the Addl. Chief Metropolitan's Court at Dadar by filing complaint under Section 156(3) of the Code of Criminal Procedure bearing C.C.No. 107/SW/2016. The present petitioners are arrayed as respondent nos.2, 3 and 4 respectively. The allegation against the present petitioners is that they demolished the structure belonging to the respondent no.2 complainant, in collusion with the other proposed accused i.e. accused nos.1, 5 and 6 (accused nos.1, 5 and 6 are not parties to this petition).

4 The learned Magistrate, by an order dated 9th January 2017 issued a direction under Section 156(3) of the Cr.P.C to the Dadar Police Station in pursuance of which subject MECR is registered.

5 There is no dispute that the petitioner nos.1 and 2 are Executive Engineers and petitioner no.3 is the Sectional Engineer of MHADA and therefore, they are public servants within the meaning of Section 21 of the IPC. There is also no dispute that these public servants are removable by the State. Further, there is no dispute that notice under Section 95A of the MHADA Act was already issued to the complainant and in pursuance of this notice, structure of respondent no.2 complainant came to be demolished by the present petitioners.

6 Thus, the demolition of the respondent no.2's structure was carried by the petitioner in exercise of the statutory powers. Thus, the petitioners are alleged to have committed an act in discharge of their official duty. Section 156(3) of the Cr.P.C is amended by the Maharashtra Act No.XXXIII of 2016 thereby adding two provisos to sub-section (3). The provisos read as follows :

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under [section 197](#) of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority”.

7 In light of the first proviso mentioned herein above, the learned Magistrate could not have directed investigation against the petitioners who are admittedly public servants, in the absence of any sanction from the competent authority. Before filing complaint under Section 156(3), it was obligatory for the complainant-respondent no.2 to approach the Station House Officer and superior authority respectively under Section

154(1) and 154(2) and it is only on their refusal to entertain his grievance, power under Section 156(3) could have been invoked.

Respondent no.2 has filed an affidavit dated 10th September 2015. However, though he has referred the decision of *Priyanka Srivastava & Anr Vs. State of Uttar Pradesh & Ors*¹, there is no statement that he approached the Police Station or any superior officer and that they refused to entertain his grievance. Unfortunately, the learned Magistrate has also not considered this aspect. Thus, this is a clear case of non-application of mind.

8 In light of above, in our considered opinion, writ petition must succeed.

9 We accordingly allow the Writ Petition in terms of prayer clause (a). MECR No. 2 of 2017 is quashed and set aside qua the petitioners.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)

1 AIR 2015 SC 1758