

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO. 1890/2019
IN
CRIMINAL APPLICATION (APL) NO. 1104/2019 (D)

Arun S/o Bhagwan Unhale and Ors.,
..VS..

State of Maharashtra, through P.S.O., Police Station City Kotwali Akola, Tq. and Dist. Akola
and Anr.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H. M. Mohta, Advocate for the applicant.
Shri T. A. Mirza, A.P.P. for the non-applicant No.1.

CORAM : Z. A. HAQ, AND
M. G. GIRATKAR, JJ.

DATED : 06th December, 2019

This application is for recalling the order dated 18th November 2019, by which this Court dismissed the Criminal Application (APL) No. 1104/2019.

2. Heard Shri H. M. Mohta, Advocate for the applicants. He has submitted that the applicants are government servants and without sanction, offence cannot be registered against them, and offences are not made out against them. The revision application was moved before the Sessions Court Akola. Said revision application came to be decided on 03rd September, 2019. Learned advocate for the applicants points out the para No.11 of the judgment and submitted that Sessions Court has wrongly observed that the revision application was not maintainable. The applicants are the government servants and without sanction they cannot be

prosecuted. The sanction as provided under Section 197 of the Code of Criminal Procedure is not obtained by the complainant. Hence it is prayed that the application be allowed.

3. Heard Shri T. A. Mirza, learned A.P.P. for the non-applicant No.1. He has pointed out the Section 156(3) of the Code of Criminal Procedure and submitted that no sanction was required before amendment in 2017 and applicants are at liberty to move before trial Court for discharge.

4. We have already observed while passing order dated 18th November 2019 that applicants are at liberty to move before trial Court for discharge. Section 156(3) reads as under :

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

“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 (2 of 1974) 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 the 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.”

5. Before the amendment of 2017, sanction under Section 197 of the Code of Criminal Procedure was not required to issue direction for investigation by Judicial Magistrate First Class for the offence against the public servant. But after the amendment of 2017, the Judicial Magistrate, First Class shall not issue any direction to the police to investigate under Section 156(3) of Code of Criminal Procedure against the public servant. The opening words of amended proviso says, “No Court shall issue any direction for investigation against the public servant except with previous sanction under Section 197 of the Code of Criminal Procedure”.

6. In the present matter, the direction under Section 156(3) of Code of Criminal Procedure was given by Judicial Magistrate, First Class on 25.03.2014, and therefore, it is clear that it was before amendment of 2017. At that time there was no hurdle to issue direction to investigate the crime / offences against the government servants.

7. Whether the act of applicants amounts to criminal act while discharging their duties as public servant or not is to be decided by the trial Court, and whether sanction is required or not is also to be decided by the trial Court.

Hence, we do not find any merit in the application, accordingly we **dismiss** the same. No costs.

JUDGE

JUDGE