

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.379 OF 2022

MANOJ GENU SANDHAN
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. S. J. Salunke
APP for Respondent-State : Mr. V. M. Kagne
Advocate for Assist to APP : Mr. S. Y. Mahajan

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WITH

**CRIMINAL APPLICATION NO.1271 OF 2022
IN ABA/379/2022**

VASANT DHONDIBA BHAVTHANKAR
VERSUS
MANOJ GENU SANDHAN AND ANOTHER

.....

Advocate for Applicant : Mr. S. Y. Mahajan
Advocate for Respondent No.1 : Mr. S. J. Salunke
APP for Respondent No.2-State : Mr. V. M. Kagne

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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-04-2022**

ORDER :

1. Criminal Application No.1271 of 2022 has been filed for assist to learned APP. Said application stands allowed and disposed of.
2. Applicant in ABA No.379 of 2022 is apprehending his arrest in connection with Crime No.90 of 2022, dated 04-03-2022, registered

with Ambajogai City Police Station, District Beed, for the offence punishable under Section 468, 469 r.w.34 of the IPC.

3. Heard learned Advocate Mr. S. J. Salunke for applicant, learned APP Mr. V. M. Kagne for respondent-State well assisted by learned Advocate Mr. S. Y. Mahajan for informant.

4. The applicant has been shown as accused No.5 in the FIR. The applicant is serving as Deputy Superintendent of Land Records at Ambajogai. As per the informant, he along with his brothers had purchased land admeasuring 23 Acres 11 Gunthas in Survey No.473-A and 473-B from one Vitthal Ram Pawar by sale deed dated 14-07-1970. Mutation entries in respect of the said sale deed were taken and the names of the purchasers have been mutated in the record of rights. Informant then says that he received 1 Hectore 31 R land in partition and father of accused No.3 namely Shankar Satwa Jadhav (Kaikadi) then sold his entire land. Therefore, no land was remaining in his name after 1988. No effect of the same was taken in the land records and taking disadvantage of the wrong entries accused No.3 has executed sale deed in favour of accused No.1 and 2 on 22-02-2021. Informant then says that accused No.5 i.e. the present applicant and accused No.6 without carrying actual

measurement prepared false and bogus record showing that the land of the informant in a way sold by accused No.3. No proper procedure was followed at the time of measurement which was carried out at the behest of accused No.1. Notices for the measurement of the land were issued to the adjacent land owners by Speed Post/RPAD and as per the possession, shown by the respective adjacent owners, the measurement was carried out and the boundaries were fixed on 12-06-2021 and 12-07-2021 respectively. Thereafter, inquiry was conducted to finalize the report and accordingly the report was submitted. It is the case of the prosecution that informant had made grievance to the office of the applicant stating that the sale deed was bogus and the measurement is not proper, and therefore, the applicant had immediately taken cognizance and communicated the informant that he should pay the fees for the measurement. Even the applicant had communicated to accused No.1 that he should not carry out the construction of any compound or any other construction activity in the disputed land. Informant was asked that if he has any kind of grievance, then he should deposit the fees. The informant then filed an appeal against the measurement carried out by Deputy Superintendent of Land Records. That appeal came to be allowed and the measurement

carried out and map prepared was cancelled on 27-09-2021. Thereafter also the applicant had followed the order and taken the entries on the map that it is cancelled. Therefore, whatever was the duty of the applicant he has done that, but it cannot be said that he has committed any offence. He has not forged any document.

5. The learned Advocate appearing for the applicant submitted that the complainant had filed initially the private complaint and in that complaint he had stated that though he had gone to police station to lodge the report, his complaint was not taken, and therefore, he had sent a written complaint by registered post to police station. That was also not taken cognizance, and therefore, he filed the complaint and prayed for issuance of directions under Section 156 (3) of Cr.P.C. The learned Magistrate allowed the same on 02-03-2022. In the said complaint also the present applicant was shown as accused No.5. The learned Magistrate had not considered decision in *Anil Kumar vs. M. K. Aiyappa and Anr.*, reported in 2014 CRI.L.J. 1 (Supreme Court). In this case obtaining of sanction which is a mandatory requirement under Section 197 of Cr.P.C. in respect of the government servant, it has been observed that :-

"The Magistrate cannot order investigation against the public servant while invoking powers under Section 156 (3) of Cr.P.C. if it is noticed that there was no previous sanction to prosecute such officer."

Reliance was placed on the decisions in *State of Uttar Pradesh vs. Paras Nath Singh*, reported in (2009) 6 SCC 372 and *Subramaniam Swamy vs. Manmohan Singh and Another*, reported in (2012) 3 SCC 64. He then relied on *Maharashtra Amendment to Section 156 (3) of Cr.P.C.*, which runs thus :-

"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."

This amendment has come into place in 2016 after the decision in *Anil Kumar (Supra)*, and therefore, when there is prohibition to a Magistrate to order an investigation under Section 156 (3) of Cr.P.C. against the person who is or was a public servant and the act is stated to have been done in his said capacity or purporting to act in discharge of his official duty, then unless there is previous sanction under Section 197 of Cr.P.C. even the order for investigation cannot be passed. This point has been totally missed by the learned Magistrate.

Further, reliance has been placed on the decision in *UPS Madan vs. State of Maharashtra, reported in 2019 (2) ABR (Cri) 801*, wherein the Division Bench of this Court after taking into consideration the amendment to Section 156 (3) of Cr.P.C. and relying upon *Anil Kumar (Supra)*, has observed that :-

"9. It is in this backdrop, the State of Maharashtra has amended and inserted the proviso to section 156 (3) of the code. By the same amendment, Section 190 of the Code of Criminal procedure was also parallelly amended by inserting identical proviso restraining the Magistrate from taking cognizance from any offence alleged to have been committed by a person who is or was a public servant, while acting or purporting to act in discharge of

official duty except with previous sanction under Section 197 of the code of Criminal Procedure or under any law for the time being in force. By the said amendment, a restraint has been imposed in directing an investigation by the Magistrate by virtue of the proviso initiated in Section 156 (3) and in the power of the Magistrate taking cognizance by the proviso inserted in Section 190. By virtue of the said amendment, no complaint can be filed against public offences without a valid sanction from the competent authority. The object of the Maharashtra Amendment aims to protect the public officials against false and frivolous and politically motivated cases. The observations of the Hon'ble Apex Court which we have referred to above, are clearly indicative of the trend of misuse of the said power in case where the complaint is bereft of any truth, it would result in demoralizing public officials/public servants from exercising their powers bona fide and it would result in the huge harassment and unless and until the entire rigmarole of the proceedings is undergone, there can be no solace to an honest public official who is purported to exercise his duty fearlessly and effectively. By the amendment inserted in the year 2016, it is not competent for a Magistrate to order an investigation under Section 156 (3) on a complaint against the public servant in absence of any previous sanction under Section 197 of the Code of Criminal Procedure."

The learned Advocate for the applicant also relied on the decision in *Mrs. Priyanka Srivastava vs. State of U.P.*, reported in *2015 Cri.L.J. 2396*, and submitted that the Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions under Section 156 (3) of Cr.P.C. without proper application of mind. Here, the order passed by the learned Magistrate directing investigation under Section 156 (3) of Cr.P.C. even as against the applicant, lacks application of mind, and therefore, the applicant ought not to have been even made as an accused in the FIR, he deserves protection.

6. The learned APP Mr. V. M. Kagne well assisted by learned Advocate Mr. S. Y. Mahajan has strongly opposed the application and submitted that the measurement to be done by officer of the rank of Deputy Superintendent of Land Records is not as simple as tried to be submitted. In fact, entire revenue record ought to have been considered by him. He should see that whether any land is left or shown to be owned by the person making such application. Mere entry in the 7/12 extract will not be the requirement. Even the measurement was done prior to the present measurement i.e. in the year 1995. He ought to have taken help of the record which is

available with his own office. Many shortcomings can be seen from the measurement that was carried out by the applicant and those shortcomings were highlighted by his superior and the superior had set aside the measurement as well as map drawn by the applicant. The custodial interrogation is definitely necessary because the intention of the applicant in preparing such forged document will have to be gathered from him.

7. The learned APP has relied on the decision in *Manju Surana vs. Sunil Arora and Others*, reported in 2018 (2) Crimes (SC) 363, wherein the matter was referred to the Larger Bench on the point whether prior sanction for prosecution qua allegation of corruption in respect of a public servant is required before setting in motion even the investigating process under Section 156 (3) of Cr.P.C.

8. At the outset, it will have to be considered that this is a bail application, and therefore, we cannot go into the aspect as to whether map that was prepared and the measurement that was carried out, was correct or not. Already the appellate authority has set aside the measurement and the map. The Investigating Officer appears to have even sit in the appeal and taking advantage of the observations from the appellate authority, who set aside the

measurement, has also stated that how the measurement carried out by the applicant was wrong. In fact, it is not the job of the Investigating Officer. Merely because there are certain shortcomings and the appellate authority with reasons has set aside the said measurement, it cannot per se say that there is forgery and preparation of false document.

9. The most appealing point is as to whether the applicant could have been made as an accused in the FIR which is on the basis of the order passed by the learned Magistrate in application filed by the informant for seeking directions under Section 156 (3) of Cr.P.C. The copy of the said order has been produced on record and it does not absolutely touch the point of Section 197 of Cr.P.C. as well as learned Magistrate has not taken note of the amendment to Section 156 (3) of Cr.P.C. in Maharashtra which has come into effect from 2016. We may not go to the decisions in *Paras Nath Singh (Supra)*, *Subramaniam Swamy (Supra)*, and *Anil Kumar (Supra)* because now the legislature has made the change and the law has been made on that point. It is for the Courts to implement that law. In clear words, the proviso to Sub-section (3) of Section 156 of Cr.P.C. it is stated that no Magistrate shall order an investigation under this

Section against a person who is or was a public servant 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 Cr.P.C. or under any law for the time being in force. In other words, the previous sanction to prosecute such public servant is necessary even before the order is passed under Section 156 (3) of Cr.P.C. There are absolutely no pleadings in the complete application filed by the informant that he had ever tried to obtain previous sanction under Section 197 of Cr.P.C. Even if he would have given the date on which he had applied for sanction and it was not granted or that it has not been decided within a period of 90 days, then it would have been a deemed permission. But, we cannot invoke that provision also which has come as a consequence to the amendment in 2016 to Section 156 (3) of Cr.P.C., in Section 197 of Cr.P.C. Therefore, prima facie the order that was passed by the learned Magistrate (Court No.3), Ambajogai on 02-03-2022 for giving directions for investigation under Section 156 (3) of Cr.P.C. as against the present applicant appears to be illegal, and therefore, he deserves protection under Section 438 of Cr.P.C. Hence, following order.

ORDER

- 1) Application stands allowed.
- 2) In the event of arrest of the applicant Manoj Genu Sandhan, in connection with Crime No.90 of 2022, dated 04-03-2022, registered with Ambajogai City Police Station, District Beed, for the offence punishable under Section 468, 469 r.w.34 of the IPC, he be released on P.R. Bond of Rs.20,000/- with one surety of like amount.
- 3) He shall not tamper with the evidence of the prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.