

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.559 OF 2022

SALLAUDDIN SHAIKH MUNIR
VERSUS
MR . SAGAR DHAWALE

...
Mr. Ruchir S. Wani h/f Mr. H. P. Randhir, Advocate for petitioner.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.06.2022

ORDER :-

. By this writ petition, the petitioner intends to invoke the constitutional powers of this Court under Article 227 of the Constitution of India to challenge the order dated 02.12.2021 passed by the learned Judicial Magistrate First Class, Bhadgaon, Dist. Jalgaon in Criminal Miscellaneous Application No.151 of 2021 and order dated 15.01.2022 passed by the same Court thereby directing the petitioner – complainant to comply with Section 197 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Ruchir S. Wani holding for learned Advocate Mr. H. P. Randhir for the petitioner. It is not even necessary to issue notice to the respondent.

3. The facts giving rise to the present petition are that the present petitioner is the original complainant, who has filed Criminal Miscellaneous Application No.151 of 2021 for directions, for investigation under Section 156(3) of the Code of Criminal Procedure by learned Judicial Magistrate First Class, Bhadgaon contending that the present respondent – original accused has committed offence under Section 166, 465, 467, 471 of Indian Penal Code. It was contended that the complainant is the owner of one tractor bearing number MH-19-CV-1727 by taking loan from Sundaram Finance Limited. The loan is yet to be repaid. A work order issued by the Public Works Department of Jalgaon dated 24.05.2021 was shown to him and his tractor along with trolley was taken on rent for Government work. It was represented that the royalty would be paid by the contractor and, therefore, he had given the tractor and trolley for the said work. Communication was then given by the Public Works Department on 30.06.2021 to Tahsildar in respect of information about such deductions in respect of royalty that would be paid by the contractor. It is then stated that Talathi Kajgaon, Kotwal-Kolgaon and Kotwal-Khedgaon had prepared false statements in respect of transportation of murum on 31.06.2021. Panchanama was prepared on 01.07.2021. In fact, there is no question of date 31 in the month of June. The Tahsildar has prepared the said false panchanama when in

fact on that day the tractor was in his office premises i.e. on 30.06.2021. Since 30.06.2021, the Tahsildar has seized the tractor as well as trolley without any reason and a notice has been issued to the complainant asking for penalty of Rs.1,04,840/-. When all the forged documents have been created, he gave complaint on 25.10.2021 to the Police Inspector, Bhadgaon Police Station, however, no cognizance of the same was taken and, therefore, by the said application, the complainant had contended that the matter be sent for investigation under Section 156(3) of the Code of Criminal Procedure.

4. After hearing the learned Advocate for the petitioner - complainant, perusing the complaint and the documents, the learned Magistrate was of the opinion that the investigation is not required to be done by police, but it was necessary to give opportunity to the complainant to put forward his case and, therefore, by treating the case as private complaint, it was posted for verification by order dated 02.12.2021. Thereafter by order dated 15.01.2022, he was directed to comply with Section 197 of the Code of Criminal Procedure. Both these orders are under challenge in this writ petition.

5. The learned Advocate appearing for the petitioner – complainant has submitted that when on the face of the record cognizable offence

was made out and there is also the compliance by the complainant, the learned Magistrate ought to have sent the matter for investigation under Section 156(3) of the Code of Criminal Procedure. He has drawn the attention of this Court on the work order which specifically states that the royalty would be paid by the contractor. He had also brought it to the notice of this Court the letter dated 30.06.2021 issued by Public Works Department to Tahsildar, Bhadgaon. He also pointed out the statement and panchanama drawn by the respondent – accused and then the order in respect of payment of fine issued to the accused. It was specifically pointed out that there is no such date as 31.06.2021 since there are only 30 days in the month of June. Further, on the same day i.e. 30.06.2021, the tractor and trolley was illegally seized, yet the panchanama has been drawn on 01.07.2021. This shows the falsity on the part of the accused and it amounts to offence under the Indian Penal Code. There was no question involved of Section 197 of the Code of Criminal Procedure as preparation of false documents cannot be the official duty or purporting to be an official duty. He relied on the Division Bench's decision of this Court in ***Alka Udhav Khaire and others Vs. State of Maharashtra and another, [2017 ALL MR (Cri.) 3893]***, wherein it has been observed that :-

“23. *The primary object of the FIR from the point of view of the informant is to set the criminal law in motion*

and for investigating officer is to obtain information about the alleged criminal activity, so as to enable him to trace out and book the culprit. It is true that there has to be FIR under Section 154 of Cr.PC. about the commission of cognizable offence and if the officer in-charge of the police station refuse to record the information, the remedy is available to the aggrieved complainant to approach to the higher authority of police under Section 154(3) of Cr.PC. But, the failure to comply with the procedural formalities under Section 154(1) or 154(3) would not divest the jurisdiction of the Magistrate under Section 156(3) of Cr.PC. There can be cases where the Magistrate can exercise discretion even in non compliance of the provisions of Section 154(1) or 154(3) of Cr.PC. In the matter in hand, in view of the peculiar facts and circumstances of the case, nature of the allegations nurtured against the applicants as well as the factual aspect that the complainant launched offensive against the applicants and appeared before this Court in person, we find that the noncompliance of the provisions of Section 154(1) and 154(3) of Cr.PC. would not be an imediment for exercise of discretion under Section 156(3) of Cr.PC.”

6. It is to be noted that there appears to be some erasers and re-writing of dates, but that does not *per se* would lead any Court to a conclusion that those documents are falsely prepared. The panchanama is stated to have been executed at about 12.30 a.m. on 01.07.2021. Since it was the midnight, that confusion appears to be there and some printed form has been used thereby scoring out certain things. Definitely,

that could be gone into by the concerned Court at the relevant stage, but only on the basis of those allegations or scoring out, it cannot be said that it was an intentional act of preparation of false documents. No doubt, a work order appears to have been given by PWD Division, Jalgaon to one Chetan Nandkumar Tarkas for some construction work and part of it is payment of royalty. A letter has been issued by Assistant Engineer, PWD Division, Bhadgaon on 30.06.2021 to Tahsildar, Bhadgaon. It was stated that after giving the particulars of two vehicles that they would be transporting murum and parent rock (डबर) and the royalty would be paid by the contractor. However, it is to be noted that from that letter, permission was sought to take out those articles from the mine and the transportation thereof. The complainant has not stated that upon the said letter, the Tahsildar had issued pass/permit as per the usual practice specifying the numbers of the vehicles as to how much they are allowed to transport the mines or the minerals. Without holding such permit, the complainant or his driver could not have transported the material. The document which has been produced at Exhibit-C along with the petition does not bear the acknowledgment of Tahsildar office and it was of the same date i.e. 30.06.2021. Whether in one day every formality would have been completed and the passes would have been in the hand of the drivers of both the vehicles is a

question. Complainant whether was justified in only considering the work order and the said letter. He has not given particulars as to whether he independently had entered into any written contract with said Chetan Nandkumar Tarkas – the contractor, or a separate contract was made between the Public Works Department and the complainant. Date of the said contract would have been the material aspect also.

7. Now, turning to the fact that the complainant intends to say that provisions of Section 197 of the Code of Criminal Procedure are not applicable and, therefore, prior sanction is not necessary but it is to be noted that in view of Maharashtra amendment to Section 156(3) of the Code of Criminal Procedure, such permission is necessary i.e. sanction to prosecution is necessary. The said Maharashtra amendment to Section 156(3) reads thus :-

“156(3)....

State Amendments –

[Maharashtra] – In its application to the State of Maharashtra, in Section 156, after sub-section(3), add the following provisos, namely:-

“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,” - Maharashtra Act 33 of 2016, section 2.”

Even before passing an order under Section 156(3) of the Code of Criminal Procedure, no such communication has been produced on record before the learned Magistrate to show that any attempt was made by the complainant to seek sanction to prosecute respondent – accused from the competent authority.

8. Whether to send a case for investigation under Section 156(3) of the Code of Criminal Procedure or not lies with the Magistrate. A minute scrutiny of the complaint is not necessary, but taking into consideration the contents of the facts complained in the complaint, the learned Magistrate appears to have found that the offence alleged is in respect of the documents and, therefore, it is not necessary to send the matter for investigation to police. In fact, he could not have sent the matter for investigation under Section 156(3) of the Code of Criminal Procedure in

view of the Maharashtra Amendment (Act No.33 of 2016).

9. Now, coming to the order passed on 15.01.2022 is concerned, it is only stated that the complainant is directed to comply with Section 197 of the Code of Criminal Procedure. It appears that the learned Magistrate has not come to the final conclusion that such sanction is required in the present case. It is still open to the complainant either to show that such sanction is not required and if it is required, then an opportunity is given by the Magistrate that he may comply with the said provisions. The complaint is not dismissed yet. Under such circumstance, this Court need not use its constitutional powers to set aside the two orders. The writ petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm