

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

CRIMINAL APPLICATION NO. 3345 OF 2021

Dr. Ravindra S/o Kishanrao Deshmukh
Age : 51 Years, Occu. : Service as Medical Officer,
PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani.
R/o. PHC, Pimpaldari, Tq. Gangakhed,
Dist. Parbhani.

... Applicant

Versus

1. The State of Maharashtra,
Through its Collector,
Collector Office, Parbhani,
Tq. & Dist. Parbhani.
2. The Police Inspector,
Police Station, Pimpaldari,
Tq. Gangakhed, Dist. Parbhani.
3. The Tahsildar and Incident Commander,
Gangakhed, Tq. Gangakhed, Dist. Parbhani.

... Respondents

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Mr. S. V. Suryawanshi, Advocate for Applicant.

Mr. S. J. Salgare, APP for Respondents - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 5th DECEMBER 2022

JUDGEMENT (ABHAY S. WAGHWASE, J.) :

1. Present applicant has invoked provisions under section 482 of the
Code of Criminal Procedure raising following prayers :-

“A] The Criminal Application may kindly be allowed.

B] The FIR/complaint bearing C.R. No. 163 of 2021 dated 10.12.2021 registered with Police Station, Pimpaldari, Tq. Gangakhed, Dist. Parbhani for the offence punishable u/s. 2, 3 and 4 of The Epidemic Diseases Act, 1897 and under section 56 of the Disaster Management Act, 2005 may kindly be quash.

C] Pending hearing and final disposal of this Criminal Application, further investigation w.r.t. FIR/complaint C.R. No. 163 of 2021 dated 10.12.2021 registered with Police Station, Pimpaldari, Tq. Gangakhed, Dist. Parbhani for the offence punishable u/s. 2, 3 and 4 of the Epidemic Diseases Act, 1897 and u/s. 56 the Disaster Management Act, 2005 may kindly be stayed and suspended.

D] Ad-interim relief in terms of prayer clause “C” may kindly be granted in favour of present applicant.

E] Any other just and suitable order may kindly be granted to which the applicant is as per the provisions of law and oblige.”

F] Quash and set aside S.C.C. No. 240 of 2022 pending in the Court of the learned Judicial Magistrate First Class, Gangakhed, Dist. Parbhani.”

2. Learned counsel for applicant submitted that applicant is a professional doctor and he is in service of State Government and currently working as Medical Officer at PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani. It is pointed out that throughout his service, there is not a single complaint and he has performed his duties assigned to him by superior. Learned counsel

submitted that applicant is in receipt of show cause notice dated 18.11.2021 from Chief Executive Officer (CEO), Zilla Parishad, Parbhani, alleging poor and unsatisfactory performance while applicant was discharging the duty at PHC. It is submitted that allegations made in the show cause notice were apparently false and baseless. Applicant was served with the said show cause notice on 30.11.2021 in spite of it being issued on 18.11.2021. It is submitted that applicant had promptly replied to the show cause notice by tendering his explanation dated 02.12.2021 and pointed out whatever efforts he took during Covid-19 period regarding prevention, precaution and vaccination. Villagers were made aware of the importance of vaccination. List of beneficiaries was also maintained. Regular campus were held to achieve the target of vaccination. Therefore, applicant had diligently performed his duties and had therefore tendered sufficient explanation to the show cause notice.

3. It is next submitted that on 17.09.2021, applicant was transferred from Trauma Care Unit, Bhusawal, Dist. Jalgaon to PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani on the basis of false allegation. That, Maharashtra Rajya Vidhi Mandal Andaj Samiti had also paid visit to the PHC, Pimpaldari on 28.10.2021. That, on that day, some staff was found to be absent and therefore memos were also issued and as such applicant has himself performed duties and also kept watch and regulated the works of subordinates. Prompt action was taken against the non diligent staff. That, due

efforts have been taken by the applicant in the mission of Covid-19 vaccination and Government Resolutions issued were given effect to, but still action was taken against him.

4. It is next submitted that as applicant has refused to certain illegal acts, action has been taken against him with ulterior motive. That, out of frustration, Chief Executive Officer (CEO), Zilla Parishad has deliberately not considered the explanation in proper perspective and has ignored the efforts taken by the applicant, and has directly issued suspension order and moreover, complaint is lodged against him for registration of crime under sections 2, 3 and 4 of Epidemic Diseases Act, 1897 and under section 56 of Disaster Management Act, 2005. Hence, for want of justice, applicant has knocked the doors of this Court seeking the above prayers.

5. Learned APP would oppose by submitting that applicant is a Medical Officer. Therefore, during Covid-19 pandemic he was duty bound to render good services and take care of life of all persons residing in the jurisdiction where he was deputed. Time to time directions were issued by Government, but the same were not followed by him. Though he gave explanation for the show cause notice, it was found to be unsatisfactory and C.E.O., Zilla Parishad had taken action of registration of crime for commission of above offences. Therefore, under such circumstances, prayers of quashment cannot be considered. Learned APP thus prayed to dismiss the application.

6. Here, section 482 of Cr.P.C. is invoked for quashing F.I.R. The law is fairly settled that inherent powers under section 482 of Cr.P.C. are permitted to be, rather must be, exercised by this Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly settled by slew of judgments including ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.***; (2007) 12 SCC 1 and ***Mahendra K.C. Vs. State of Karnataka and Another*** ; (2022) 2 Supreme Court Cases 129.

7. Here, it seems that there is no dispute that applicant was working as a Medical Officer and at the time of issuance of show cause notice, he was in service of Primary Health Center at Pimpaldari. It seems that on 18.11.2021, Chief Executive Officer, Zilla Parishad has issued show cause notice against applicant commenting on his performance at the time of Covid-19 pandemic.

8. Allegations levelled against applicant could be summarized as under :-

(i) That, out of the population of 28264, only 16147 people received the first does of vaccination and 7701 people were given second dose of vaccination.

(ii) Still, 42.86% of population is yet to be given first dose of vaccination and 72.25% could not be given second dose.

(iii) Applicant failed to formulate proper plan for completing vaccination in the rural area under his control, to plan for vaccination of college students above 18 years of age and to prepare booth-wise list of people who have not got first doses. Old people coming under the Primary Health Center, who could not move out of their house, the applicant failed to make list of such people and to execute a scheme to vaccinate them by visiting their houses.

(iv) Applicant failed to establish vaccination centers at weekly *bazar*, crowded public places like fairs and to promote and make publicity about vaccination and to give counseling to people remained to be vaccinated.

(v) Applicant failed to perform all these duties in spite of notice being given to him in the meeting by issuing letter and also through video conference.

9. It seems that applicant has offered explanation dated 02.12.2021 to show cause notice which is at Exhibit-B. We have already discussed the substance of the explanation allegedly tendered by the applicant while hearing submissions.

10. Grievance raised before us is that, the State authorities have not taken into account the explanation offered by him and have rather issued suspension order on 13.12.2021 (Exhibit-E) and moreover crime has been registered against him.

Precisely above FIR is now sought to be quashed which is at Exhibit-H. We have already reproduced allegations in para No.8.

11. FIR seems to be at the instance of Tahsildar, Gangakhed. It needs to be noted that at the time of FIR, entire country was affected due to Covid-19 and all State Governments, including Government of Maharashtra, were taking steps to control the pandemic and as such, time to time several guidelines were issued. State machinery, more particularly Health Department had the responsibility, and therefore certain duties were cast upon not only doctors, but even untrained staff to meet the peculiar situation. Performance of doctors, who were assigned major role seems to assess at Taluka and District levels and actions were initiated against those who had given poor performance. There are allegations of dereliction in duties, i.e. at the time of vaccination. It seems that safety norms prescribed by Government were not being followed at PHC and because of mismanagement there was overcrowding and therefore it was expected from authorities like present

applicant to take appropriate steps including counseling. It was also revealed that percentage of vaccination at PHC, Pimpaldari, under present applicant was unsatisfactory and it is alleged that there was negligence while giving effect to the directions issued by the higher Government authorities.

12. It is alleged that, provisions under sections 2, 3 and 4 of the Epidemic Diseases Act, 1897 and under section 56 of Disaster Management Act, 2005 were made applicable and FIR was registered. We have considered the act and the provisions therein. Though the enactment came in 2005 for effective management of disasters, actual implementation of the act commenced only after the outbreak of pandemic.

Section 56 of the Act is incorporated in Chapter X of the Disaster Management Act, 2005 which provides for offences and penalties. The same reads as under :-

56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act - Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.”

Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897 read as under :-

“2. Power to take special measures and prescribe regulations as to dangerous epidemic disease. - (1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an out-break of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may take measures and prescribe regulations for—

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(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

3. Penalty — (1) Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

(2) Whoever,—

(i) commits or abets the commission of an act of violence against a healthcare service personnel; or

(ii) abets or cause damage or loss to any property, shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.

(3) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code (45 of 1860) to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.

4. Protection to persons acting under Act.—No suit or other legal proceeding shall be against any person for anything done or in good faith intended to be done under this Act.”

13. In the light of above legal provisions if the case in hand is put to scrutiny, it needs to be admitted that entire nation was gripped with the pandemic of Covid-19. It was first time such disease has spread and therefore entire nation and throughout the globe there was chaos and emergency steps were required to be taken including drafting new Standard Operative Procedure (SOP) and Rules and Regulations for bringing under control the

said pandemic. Entire Health Centers were under tremendous pressure and there were several casualties, including the medical staff, which was said to be in the forefront in dealing with the pandemic.

14. We have considered the allegations levelled against applicant by his higher authorities. The basis on which the allegations are levelled has not been substantiated. The entire exercise of issuance of show cause notice seems to have been done on the basis of data collection.

15. In our opinion, performance of a person during such difficult times, should not be considered as a criteria to hold a person solely and entirely responsible. Therefore, drastic action of suspension followed by registration of FIR are too harsh at such difficult times. Therefore, we are of the considered opinion that relief as prayed is required to be granted. Accordingly, we proceed to pass following order :

ORDER

- i) The application is allowed in terms of prayer clauses (B) and (F).
- ii) The application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)