

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

CRIMINAL WRIT PETITION NO.149 OF 2023

**SUDHAKAR GUNJAJI WADJE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. U. B. Deshmukh
APP for Respondent No. 1: Mr. S. P. Sonpawale
Advocate for Respondent Nos. 2 : Mr. Akram Inamdar h/f
Mr. S. S. Kazi

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 08, 2023

PER COURT :

1. At the outset, learned Counsel for the Respondent No. 2/Original Informant raises objection about maintainability of the Petition.

2. Perusal of the record indicates that without obtaining sanction application under Section 153(3) of Cr.P.C came to be filed before learned Magistrate. Learned Magistrate also in complete ignorance of the relevant provisions of law, has passed the impugned order. On that count the said order itself is not tenable. Hence, objection with regard to the maintainability of the Petition, is rejected.

3. Admittedly, Petitioner is a public servant. As

pointed out by the learned Counsel for the Petitioner that there are certain orders passed in connection with the crime in question, it is his submission that on the basis of preliminary inquiry, the Petitioner was called upon to deposit an amount of alleged misappropriation. The said order was challenged by filing Writ Petition No. 13242/2021 wherein this Court has passed conditional order directing him to deposit a sum of Rs. 3,50,000/-. Later on Petition came to be disposed of with observation that on the basis of preliminary objection, no action can be taken and for that purpose the report of Divisional Department Enquiry is essential. It is the grievance of the Petitioner that private individual having no concern has filed application under Section 156(3) of Cr.P.C. before learned Magistrate and without obtaining any sanction, learned Magistrate has passed order of issuing direction in that regard.

4. Learned Counsel for Respondent No. 2 submits that an application was given to the Collector on 26.10.2021 asking the Collector to take action in this regard and to lodge report. It is submitted that since

the Collector has failed to lodge report, it is a deemed sanction and hence, application under Section 156(3) of Cr.P.C is tenable so also order impugned is sustainable.

5. There is no dispute about the fact that the Petitioner is a public servant and the provisions of Section 197 of Cr.P.C. has application. Perusal of Section 156(3), Maharashtra Amendment, clearly shows 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. It is thus, clear that for the purpose of maintaining such application obtainment of sanction is pre-condition.

6. As far as present case is concerned, there is absolutely no material on record to indicate that at no point of time any sanction was sought for the

prosecution of the Petitioner as contemplated under Section 197 of Cr.P.C. Letter referred by the Counsel for the Respondent/informant is not an application for obtaining sanction of the prosecution. Thus, for non compliance of Section 156(d) proviso to Section 156, learned Magistrate ought not to have taken cognizance of application and should not have passed order in this regard.

7. In view of above, there is merit in the Petition. Hence, Writ petition is allowed in terms of prayer clause 'B'.

(R.M. JOSHI, J.)

Malani