

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

CRIMINAL WRIT PETITION NO. 829 OF 2022

Asaram Bhaurao Jadhav

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Akshay Subhash Tilve, Advocate for the Petitioner.

Smt. D. S. Jape, APP for Respondent No. 1.

Smt. Shubhangi D. More, Advocate for Respondent Nos. 2 and 3.

Smt. Nayana Patil, Advocate h/f Smt. Surekha Mahajan, Advocate for Respondent Nos. 5 and 6.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 21st February, 2023.

Date on which order pronounced : 05th April, 2023.

ORDER :-

. This petition is filed by original applicant seeking direction to police under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.PC."). His application to the learned J.M.F.C. is turned down, so also a revision preferred against that order by the learned Additional Sessions Judge. Both the Courts below have mainly rejected the prayer for want of sanction under Section 197 of the Cr.PC. and for want of following mandatory provision under Section 154 (3) of the Cr.PC.

2. The facts giving rise to the present petition are as below :

3. The petitioner is in service with Secondary School Board, Nashik. He noticed while at Aurangabad that, respondent No. 2 then working as Secretary/Superintendent of S.C.C. Board, Aurangabad and respondent No. 3 was also working with S.C.C. Board, Aurangabad. It is alleged by the petitioner that, respondent No. 2 while occupying a quarter given to her stayed in the Government rest house without taking permission. It is alleged that, at the same time, she has also availed house rent allowance and thus, she has embezzled an amount in a period of four years. Against respondent No. 3 it is alleged that, though he was working as Assistant Superintendent and had an idea of this embezzlement, still he has not taken any action and thus, both the respondents have committed an offence punishable under Sections 120 (b), 420, 406, 409, 467, 468 and 471 of the Indian Penal Code and prayed for direction under Section 156 (3) of the Cr.P.C. The application bearing Criminal Misc. Application No. 1931/2021 came to be rejected by the learned J.M.F.C., Court No. 17, Aurangabad by order dated 30.09.2021.

4. The petitioner challenging the rejection by the learned J.M.F.C. filed revision bearing Criminal Revision Application No. 169/2021 in the Court of learned Sessions Judge, Aurangabad. The learned

Additional Sessions Judge, Court No. 12, Aurangabad by the judgment and order dated 24.03.2022 dismissed the criminal revision application, as stated above, for the reasons of non compliance of Section 154 (3) of the Cr.P.C. and for want of sanction under Section 197 of the Cr.P.C. The petitioner is thus before this Court by way of this petition.

5. In support of petition, learned advocate for the petitioner submits that, the petitioner had sent letter to the Chairman of Secondary and Higher Secondary Board, Pune, Secretary of Maharashtra State, Secondary and Higher Secondary Board, Pune and the Commissioner of Education, State of Maharashtra, Pune dated 15.04.2021. Since there was no communication from any of the authorities, he submits that, there is a deemed sanction to prosecute. In support of his submission, he relies upon the communication dated 29.10.2020 sent by the Deputy Secretary, State of Maharashtra, Education Department wherein, it is communicated to the Commissioner of Education, Pune that he is expected to take action on the complaints received by the office of the Commissioner and also to the State Government in which there is a reference on the complaints made by the petitioner to the Government in respect of respondent Nos. 2 and 3. He further submits that, when the complaints were

made, it is only on 08.04.2021 respondent No. 2 applied to the Chairman of the Divisional Board, Aurangabad and got the permission to stay in the rest house from 10.08.2017 with retrospective effect. It is further pointed out that, in fact, she herself was holding charge of the post of Chairman, Divisional Board, Aurangabad. This conduct clearly shows that, she has done this exercise with malafide. He further invited attention to the Government Resolution dated 30.05.1989 wherein, it is clearly directed that the person would be entitled to house rent allowance only when the residence earmarked for the said post is not kept vacant. It is submitted that, in this case, quarter allotted to respondent No. 2 was kept vacant and still the amount of house rent allowance is claimed. He submits that, on the point of sanction, the learned Additional Sessions Judge has failed to appreciate the correct position of law. He submits that, even the application which was made for permission to stay in the rest house was preferred by the respondent herself to the Chairman of S.S.C. Board by 02.11.2020. On the basis of complaint, even the departmental enquiry was started. This shows that, there is substance in his complaint.

6. Learned A.P.P. submits that, there is no dispute about the facts stated in the petition and has prayed for passing appropriate order.

7. Learned advocate for respondent Nos. 2 and 3 vehemently oppose the petition. She pointed out that, in the case of respondent No. 2 the Governor of the State is the appointing authority and therefore, sanction is necessary from the Government. She submits that, before waiting for 90 days, a complaint is filed and thus, there is no question of deemed sanction. She further submits that, there is no letter given to the Government strictly in accordance with Section 197 of the Cr.P.C. only making reference of the alleged conduct of the petitioner and to pray for enquiry cannot be said to be seeking sanction under Section 197 of the Cr.P.C. She relies upon the judgment of the High Court of Madras in a case of **C. Asaithambi – Sub Inspector of Police Tharamangalam Police Station Now at Nangavalli Police Station Vs. K. Rasamuthu in Crl. O. P No. 5031 of 2015 and M. P No. 1 of 2015 dated 15.02.2016** in support of her submission. She submits that, the respondent No. 2 was residing as per the permission granted by her superior authority in the rest house and she has paid the charges of the rest house as applicable.

8. Learned advocate for the petitioner in rejoinder submits that, he had filed a complaint on 13.08.2021 and he had sent communication on 15.04.2021 praying for taking action against the respondent Nos. 2 and 3. The complaint is thus clearly after 90 days of the said

communication. The communication was posted on 16.04.2021. Thus, the main questions that arise in the petition as to whether (i) there is compliance under Section 154 (3) of the Cr.P.C. before filing the application under Section 156 (3) of the Cr.P.C. and (ii) whether there is deemed sanction as contemplated under Section 156 (3) (Maharashtra Amendment).

9. Looking at both the questions, it is clear that, unless the petitioner complies, this Court cannot take cognizance of any of the allegations made in the complaint and cannot issue direction under Section 156 (3) of the Cr.P.C. Looking at the application made to the police authorities, it is seen that, the petitioner has sent the same communication to both the authorities on the same day. The complaint was sent to Police Inspector, Vedant Nagar Police Station on 25.04.2021 and copy of the same was sent to the Commissioner of Police, Aurangabad. There is endorsement of the police station of receipt of the representation dated 25.06.2021. One more communication is seen. On 20.07.2021 there is again communication addressed to the Police Inspector, Vedant Nagar Police Station and the copy of the same is given again to the Police Commissioner Office on 20.07.2021.

10. From looking both these communications, it is clear that, the communication to the Commissioner was not in the form of

communicating the refusal on the part of police to record the information. However, in this case, only a copy of complaint made to the Police Inspector that is simply endorsed to the Commissioner of Police. It is not even addressed to the Commissioner. This hardly can be said to be a compliance of Section 154 (3) of the Cr.P.C. To show compliance of Section 154 (3) what is required is that, a person should make a grievance to the Commissioner/Superintendent of Police stating that the in charge of police station has refused to record any information.

11. Coming to the point of sanction under Section 197 of the Cr.P.C., it is seen that, though the complaints are made to the superiors of the respondent No. 2, however, those are only in the nature of request to the authorities to take action against the respondent No. 2. There is nothing to indicate that the petitioner sent a proposal for sanction to prosecute the respondents. A letter dated 04.09.2020 is addressed to the Additional Chief Secretary, School Education and Sports Department, the Commissioner (Education), Commissionerate, Maharashtra State, Pune, Director of Education, Secondary and Higher Secondary Education Directorate, Pune and to Chairman, Maharashtra State Secondary and Higher Secondary Education Board, Pune is seen. In the said communication, it is requested to the authorities to register

an offence for embezzlement of the amount. He further requested to keep him informed as he has made the complaint. By way of another communication dated 17.11.2020 which was sent by R.P.A.D. dated 18.11.2020, it was requested to take action against the respondents by informing that, since the complaint dated 04.09.2020 no action is taken till then. It was further stated that, if no action is taken by 15.12.2020 the petitioner would be constrained to file public interest litigation in the Court. By the third communication dated 20.03.2021 again it was intimated that the petitioner would be constrained to file public interest litigation. In none of these communications petitioner has expressed that the communication he is sending a proposal for obtaining sanction to prosecute the respondents. On the contrary, the petitioner expressed that he would be constrained to file public interest litigation. Nowhere the petitioner expressed that he wants to prosecute the respondents.

12. In the letter dated 15.04.2021 the petitioner sought permission to lodge the complaint against the respondents by addressing communication to (i) Commissioner (Education), Commissionerate Education, (ii) Chairman, Maharashtra State Secondary and Higher Secondary Education Board, Pune and (iii) Secretary, Maharashtra State Secondary and Higher Secondary Education Board, Pune. In this

communication, he sought permission to prosecute. Looking to these communications, it is clear that, first three communications, there is no sanction sought as contemplated under Section 156 (3) of the Cr.P.C. Looking to the last communication dated 15.04.2021, though it is prayed for permission, it is not sought from the appointing authority neither there is in writing that the authorities to whom the letter was issued were the appointing authorities. Thus, this order cannot be said to be sanction under Section 197 of the Cr.P.C. It is a matter of record that, no such sanction was given.

13. In support of the case, the petitioner has relied upon the following judgments which are considered herein-below.

14. The judgment of the Hon'ble Apex Court in the case of **Raghunath Anant Govilkar Vs. The State of Maharashtra and others** reported in **(2008) 11 SCC 289**. In this case, the Hon'ble Apex Court has considered the provision of Section 197 of the Cr.P.C. with reference to the expression (official duty). Further, it is held that, it is not that every offence committed by a public servant require a sanction for prosecution and every act done by the accused when he is actually engaged in official duties also cannot be said to be official act. If it can be termed to be the act done by the virtue of the office, then sanction would be necessary.

15. In the judgment of this Court in a case of Miss. Charu Kishor Mehta & etc. Vs. State of Maharashtra and anr. reported in 2011 Cri.L.J. 1486, it is held that, in order to set the machinery of criminal justice in motion, for lodging of a complaint is required. This judgment is of no use to the petitioner for the reason that Maharashtra Amendment adding proviso to Section 156 (3) was not on the statute book. Proviso requiring sanction before directing 156 (3) order is inserted by Act 33 of 2016. So, in this case, it was necessary for the petitioner to make representation to the Superintendent of Police/Commissioner of Police as required under Section 154 (3) of the Cr.P.C.

16. Further judgment relied upon is the judgment of the Hon'ble Apex Court in a case of State of M.P. and others Vs. Dr. Yashwant Trimbak reported in AIR 1996 SC 765 in which it is held that, while excepting the matters with respect to which the Governor is required to act in his discretion, a personal satisfaction of the Governor is not required and the function may be allocated to minister. It was in respect of Madhya Pradesh Civil Services Pension Rules, 1976. Therein, order was executed in the name of Governor and was duly authenticated by the signature of the Under Secretary to the Government. In that view, it was held that the work can be allocated to

the minister under Article 166 (3) of the Constitution of India. In this case, this authority is not applicable.

17. Considering the above position, this Court finds that, in this case, there was no compliance of the procedure as contemplated under Section 154 (3) of the Cr.P.C. The petitioner also failed to show that, there was a sanction or a deemed sanction by the authorities under Section 197 of the Cr.P.C. For deemed sanction also it was necessary for the petitioner to send proposal to the appointing authority. The deemed sanction can be considered only when the same is sought from the appointing authority. If the permission is sought from any other authority than the appointing authority, there is no question of grant of sanction from that authority and for this reason there is no question of deemed sanction. A deemed sanction can be considered only where the authority from whom the sanction is sought is an authority to grant sanction. In other words, if the sanction would have been granted by that authority was valid sanction, it is only in that case there can be a deemed sanction. Thus, on this background, this Court finds that, learned Sessions Court has rightly considered the matter and has confirmed the order passed by the learned J.M.F.C., Aurangabad in Cri. M. A. No. 1931/2021 dated 30.09.2021. This Court therefore does not find that any ground is made out to call for interference at the hands of

this Court under Article 227 or under Article 482 of the Constitution of India. The petition therefore stands dismissed.

(KISHORE C. SANT, J.)

PS.B.