

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1283 OF 2017
WITH
CRIMINAL APPLICATION NO. 487 OF 2021

Rahematbee Mohammed Hasan

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. S.S. Patil, Advocate for petitioner

Mr. R.D. Sanap, A.P.P. for respondent nos. 1 and 2
....

CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.

DATE : 02nd MARCH, 2023

PER COURT :

1. With consent of learned counsel for the respective parties, head finally at the stage of admission.

2. By this petition under Article 226 of the Constitution of India, the petitioner has sought following relief :-

“B] To treat letter dated 16.8.2016 as refusal to take decision or no decision on the application for sanction dated 29.12.2015 by the respondent no.1 and further to treat it as by default sanction, thereby to direct the Ld. J.M.F.C. Jalgaon to restore R.C.C. No.651/2005 in its original stage and to proceed in accordance with law from the stage where it was closed.”

3. The petitioner herein had filed a private complaint, being R.C.C. No. 651 of 2005 against the Respondent No.3, who was a public servant and some other unknown police personnel for the offences punishable under Sections 326, 504 and 506(2) read with Section 34 of the Indian Penal Code. The learned J.M.F.C., Jalgaon issued summons to the Respondent No.3 on 26th April, 2007. The Respondent No.3 challenged the said order in Criminal Revision Application No. 13 of 2008. This Court allowed the said revision application mainly on the ground that the Respondent No.3 was a public servant and that no sanction was obtained under Section 197 Cr.P.C. and accordingly set aside the order of the Magistrate taking cognizance and issuing process against the Respondent No.3.

4. The petitioner had challenged the said order before the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Criminal) No. 9459 of 2016. The said SLP came to be dismissed on 01st July, 2016 with observations that the complaint was filed against a public servant without prior sanction and hence the order of the High Court cannot be faulted with. The Hon'ble Supreme Court has observed that it is open to the petitioner to take steps for obtaining sanction or to take any other steps which are permissible in law. In such circumstances, the criminal proceeding cannot be restored only on the ground that the respondent has failed to take a decision.

5. The records reveal that the petitioner had already filed an application dated 29th December, 2015 for sanction under Section 197 Cr.P.C. By communication dated 16th August, 2016, the petitioner has been informed that the said application has been 'filed' in view of disposal of Criminal Application No. 632 of 2009. It is pertinent to note that the criminal application was disposed of only for want of sanction and that the Hon'ble Supreme Court had given liberty to the petitioner to apply for sanction. In view of the liberty granted by the Hon'ble Supreme Court to the petitioner to file an application for sanction, the same could not have been 'filed' for the reason that Criminal Application No. 632 of 2009 was disposed of.

6. We, therefore direct the Respondent No.1 to take decision on the said application as expeditiously as possible and in any event within a period of six weeks. Criminal writ petition stands disposed of accordingly. Criminal application, if any, stands disposed of in view of disposal of the petition.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)