

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

CRIMINAL WRIT PETITION NO.1714 OF 2022

Chandrakant s/o Nandkishor Sakhla
age 40 years, Occu.Service,
R/o G.No.326/1, P.No.17,
Shree Gajanan Nagar, Kanalda Road,
Jalgaon, District Jalgaon

... **PETITIONER**

VERSUS

1. State of Maharashtra
through P.S.O.,
Faizpur Police Station,
Faizpur, Tq. Yaval,
District Jalgaon
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Ramesh Nina Jadhav,
Age 50 years, Occu. Agriculture Officer,
R/o Yaval Taluka Agriculture Office,
Tq. Yaval, District Jalgaon

... **RESPONDENTS**

.....
Mr. Sanket N. Suryawanshi, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 17th August, 2023

Date of reserving judgment : 22nd August, 2023

JUDGMENT (PER R.G. AVACHAT, J.):

Leave to amend to incorporate Charge Sheet Number
in the prayer clause.

2. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel appearing for the parties.

3. This petition has been filed for quashing of F.I.R. bearing C.R. No.145/2021, registered with Faizpur Police Station, Taluka Yaval, District Jalgaon and the consequential Charge Sheet bearing No.8/2022, filed in the Court of learned Judicial Magistrate, First Class, Yawal, for the offence punishable under Section 188 of the Indian Penal Code. The challenge is mainly on the ground of bar to take cognizance of the offence on police report, in view of Section 195(1)(a)(i) of the Code of Criminal Procedure (Cr.P.C.).

4. In short, the case of the prosecution is that, there was a Crop Insurance Scheme by name "Pradhan Mantri Fasal Bima Yojana (PMFBY) for the year 2019-2020. The petitioner herein was the Deputy Manager-II of I.C.I.C.I. Bank, Faizpur Branch, Taluka Yaval, District Jalgaon during the relevant time. Some of the farmers had taken crop insurance under the aforesaid scheme. The petitioner's Bank was supposed to act as intermediary between farmers taking crop insurance and the Agricultural Insurance Company. The I.C.I.C.I. Bank was expected to debit on their Kisan Debit Cards insurance premium of the farmers taking crop insurance and transmit the insurance premium to Agricultural Crop

Insurance Company. It so happened that, 27 farmers did not get amount of compensation of Rs.47,35,041/-. The farmers, therefore, raised a grievance before the Taluka and District Grievance Redressal Committee/ Forum. The District Collector, Jalgaon, therefore, held 3 – 4 meetings, wherein the officials of the I.C.I.C.I. Bank were present. It was realised that necessary details of the concerned farmers were not transmitted by the I.C.I.C.I. Bank to the Insurance Company and, therefore, those farmers could not receive compensation payable under the Crop Insurance Policy/ Scheme. Orders of the District Collector to the I.C.I.C.I. Bank have thus been flouted. The Collector, therefore, authorised Taluka Agricultural Officer (Information) to lodge F.I.R. for offence punishable under Section 188 of the Indian Penal Code. The crime thus came to be registered. The investigation thereof culminated into filing of a charge sheet.

5. Heard. Learned counsel for the petitioner relied on Section 195 of the Cr.P.C. to submit that the prosecution of the petitioner based on police report under Section 173 of the Cr.P.C. is incompetent/ illegal and, therefore, liable to be quashed and set aside.

6. The learned A.P.P. would, on the other hand, submit, the authorities concerned were hand in gloves with the officials of I.C.I.C.I. Bank. Papers of investigation would indicate, an offence

punishable under Section 406 of the Indian Penal Code is made out. The trial Court may take cognizance of the said offence and proceed against the petitioner for the same. The minutes of the meeting held by the Collector have been relied on besides the Scheme of Crop Insurance. Statements of certain farmers who did not get benefits of the Scheme/ Policy of Insurance in spite of their amount to have been debited from their Bank Accounts towards insurance premium were also adverted to. The learned A.P.P., therefore, urged for leaving the matter to the discretion of the trial Court for considering all the police papers to frame charge against the petitioner for offence punishable under Section 406 of the Indian Penal Code.

7. We have considered the submissions advanced. Perused the F.I.R. and the papers of investigation. Also gone through the scheme of crop insurance. The petitioner at the relevant time was a Deputy Manager-II, I.C.I.C.I. Bank, Faizpur Branch. The said Bank was acting as an intermediary. It is informed that, out of 321 farmers, only 70 farmers could log-in and furnish necessary details so as to avail crop insurance. The Bank in fact debited insurance premium of all such farmers and credited to the Accounts of Agricultural Crop Insurance Company. The farmers, however, did not fill in online forms. There were deficiencies such as non-matching of Aadhar Card numbers of

concerned with that of filled-in numbers thereof. There were mistakes in quoting Survey Numbers of the lands. Whereas in some cases, names appearing in Aadhar Cards did not match with the names filled in online forms. The Insurance Company, therefore, returned the insurance premium to those respective farmers who could not successfully filled-in online forms to have crop insurance. The Bank tried its best to approach the concerned farmers. In the process, the Bank did not gain any monetary benefits. On the contrary, it has suffered monetary loss in the nature of its charges-cum-commission to which it had been entitled had all the farmer successfully availed the crop insurance.

8. Section 188 of the Indian Penal Code reads thus :

“188. Disobedience to order duly promulgated by public servant :- Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

.....

Explanation :- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

We do not propose to go into the merits of the matter to find whether Section 188 of the Indian Penal Code has rightly been invoked in the facts and circumstances of the case. Suffice it to say, the offence under Section 188 of the Indian Penal Code is cognizable and, therefore, registration of F.I.R. is justifiable.

9. There is, however, bar to take cognizance of the said offence unless a complaint in that regard is filed by concerned public servant or by one who is administrative subordinate to such public servant.

10. Section 195 of the Code of Criminal Procedure reads thus :

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence :-

(1) No Court shall take cognizance –

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

11. The issue is no longer res integra, way back in 1962, a Bench of 3 Hon'ble Judges of the Supreme Court, in case of **Daulat Ram Vs. State of Punjab [AIR 1962 SC 1206]**, has observed :-

“the words of S. 195 of the criminal Procedure Code are explicit. The section reads as follows :

(1) No Court shall take cognizance –

(a) of any offence punishable under Ss.172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

..... “

The words of the Section namely, that the complaint has to be in writing by the public servant concerned and that no Court shall take cognizance except on such a complaint clearly show that in every instance the Court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of

S. 195. The words “no court shall take cognizance” have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

. . . . What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.”

12. In view of the aforesaid legal interdict, the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 of the Indian Penal Code, on police report filed under Section 173 of the Cr.P.C.

13. So far as regards submissions made by learned A.P.P. are concerned, it is to be stated that, State is not before this Court taking exception to the order taking cognizance only in respect of offence punishable under Section 188 of the Indian Penal Code nor the investigating officer has preferred an application to the trial Court for taking cognizance of the offence under Section 406 of the Indian Penal Code. If we peruse the F.I.R., what has been averred therein is that, due to mistakes committed by the Bank, some of the farmers were deprived of the benefits of crop insurance. Section

405 of the Indian Penal Codes reads :-

405. Criminal breach of trust :- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

14. It appears to be a tripartite contract among the Government, in Agricultural Department, Crop Insurance Company and the Bank. The I.C.I.C.I. Bank was no way entrusted with any property, movable or immovable nor did have a dominion over the same. From the averments in the F.I.R. and even from the statements of the persons acquainted with the facts and circumstances of the case, no ingredients of offence punishable under Section 405 of the Indian Penal Code get invoked. The Bank cannot be observed to have had dishonest intention, leave apart, question of misappropriation of amount of insurance premium or converting the same to its own use. Admittedly, the insurance premium was debited from the Kisan Credit Cards of the concerned farmers and transferred to the Crop Insurance Company. The amount of premium came to be immediately refunded to the concerned farmers who could not successfully avail Crop Insurance

Policy.

Since the learned A.P.P. has raised this issue, we have addressed the same. By no stretch of imagination, Section 405 of the Indian Penal Code could get attracted in the facts and circumstances of the case.

15. The learned A.P.P. relied on the Apex Court judgments in case of **State of Punjab Vs. Raj Singh** reported in **1998 ALL AIR (SC) 768** and **M. Narayandas Vs. State of Karnataka & ors.**, reported in **(2003) 11 SCC 251**. There can be no two views over what has been observed therein. In both these cases, it has been observed that :

Sections 195 and 340 do not control or circumscribe the power of the police to investigate – Once the investigation is completed, the Court would not be competent to take cognizance in view of the embargo in S. 195 – But, the Court can file a complaint for the offence on the basis of the F.I.R. and the material collected during investigation provided it follows the procedure laid down in S. 340 – In such case no right to file an appeal under S. 341 is affected.

In the present case, there is no question of applicability of Section 340 Cr. P.C. since the offence alleged to have been committed by the petitioner herein is under Section 188 of the Indian Penal Code, that is covered by bar contained in Section

195(1)(a) of the Cr.P.C. While Section 340 has application in relation to the offence/s covered by Section 195(1)(b) of the Cr.P.C. Both these authorities have, therefore, no application to the present case.

16. Learned A.P.P. then relied on the judgment of Madras High Court in case of **Periasami Nadar, Accused Petitioner** reported in **AIR 1965 MADRAS 526 (V 52 C 192)**, wherein it has been observed that, the expression 'complaint' includes report of police officer when it is made by him as public servant with a view to take action against a person. With all respect at our command, we do not agree with the said observations.

17. In the result the petition succeeds. The same is allowed. The order taking cognizance on police report, under Section 173 of the Code of Criminal Procedure and the consequential proceedings in Charge Sheet No.8/2022 stands quashed and set aside.

18. Needless to mention that, the material collected during investigation made pursuant to the registration of F.I.R. may be relied on if the concerned public servant files a complaint. This is

subject to law of limitation and other rights of the appellant/
accused.

19. Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-