

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

CRIMINAL WRIT PETITION NO. 1783 OF 2019

1. Baburao Fakira Bhalerao
Age: 69 Yrs, Occ: Retired,
R/o. Mundadanagar, Bhushan
Colony, Jalgaon. Tq & Dist.
Jalgaon.
2. Dagadu Ramu Patil
Age: 50 Yrs, Occ: Service,
R/o. Gurukrupa, Telephonenagar
Jalgaon. Tq & Dist. Jalgaon.
3. Prabhakar Bhagwat Sawant
Age : 70 Yrs, Occ: Retired,
R/o 116, Shivajinagar, Jalgaon
Tq & Dist. Jalgaon.
4. Sunil Jagannath Gorane
Age: 51 Yrs, Occ: Service
R/o. Tilaknagar, Neemkhedi
Road, Jalgaon.
Tq & Dist. Jalgaon
5. Waman Chindhu Dongare
Age : 63 Yrs, Occ: Retired,
R/o. Mayur Colony,
Jakhetenagar, Jalgaon
Tq & Dist. Jalgaon
6. Sunil Bhalchandra Bhat
Age 55 Yrs, Occ. Service,
R/o. LIC Colony, Jalgaon
Tq & Dist. Jalgaon.

...Petitioners

Versus

1. The State of Maharashtra
2. Dilipkumar Hirachant Jain,
Age. 66 Yrs, Occ. Business,
R/o. Jalgaon. Tq&Dist Jalgaon.

...Respondents

Mr. S. S. Jadhav, Advocate for Petitioners.

Mr. S. N. Morampalle, APP for Respondent No. 1 - State.

Mr. H. P. Randhir, Advocate for Respondent No. 2.

CORAM : R.M. JOSHI, J.

DATE : AUGUST 03, 2023

ORDER

1. This Petition is filed under Articles 226 and 227 of the Constitution of India challenging order dated 18.08.2015 of the proceedings bearing R.C.C. No. 566/2006 pending before JMFC, Jalgaon under Section 239 of Cr.P.C. rejecting application for discharge and order passed in Criminal Revision Application No. 163/2015 confirming the said rejection.

2. Respondent No. 2 filed private complaint before JMFC, Jalgaon bearing R.C.C. No. 218/2006 alleging the Petitioners, who are the Officers of the Municipal Corporation Jalgaon, that they came to his house and forcibly seized and attached his car and manhandled him. Learned JMFC directed investigation into the said crime and charge-sheet came to be filed against present Petitioners for the offences punishable under Sections 465 and 468 of the Indian Penal Code. As

far as other offences alleged in the complaint are concerned, the police exonerated them and did not file any charge-sheet in respect of those offences.

3. Learned Counsel for the Petitioners states that admittedly except for the offence punishable under Sections 465 and 468 of IPC in respect of no other offence charge-sheet has been filed against them. It is submitted that undisputedly Petitioners are public servants. According to him, the allegation against them in the complaint is that they altered panchnama by making interpolation therein. It is his submission that in view of Section 487 of Maharashtra Municipalities Act the employees discharging duties in compliance of the Act are exempted from any proceedings.

4. Though learned Counsel for the Respondent No. 2 did not dispute about the fact that the Petitioners are public servants, however, it is his contention that the complaint against them needs to be accepted on the face of it. This Court cannot go into the genuineness or correctness of the allegations made therein at this stage. According to him, if the allegations against the Petitioners, which are supported by documentary

evidence, is considered, then the offences punishable under Sections 465 and 468 of IPC are squarely made out. It is his further contention that the reason recorded by the both Courts below to the effect that the manipulation of the panchnama cannot become part of the duty is correct and deserves no interference.

5. Undisputedly the Petitioners are public servants and even as per case of complainant, they came to his house in discharge of their duties as Tax Recovery Officers. The allegations against them is that they interpolated seizure panchnama i.e., form 'I'. Thus, according to him, an offence punishable under Section 465 and 468 of IPC is made out. Even if this allegation is accepted to be true, the question arises as to whether the complaint could be maintainable against Petitioners for want of sanction as contemplated by Section 197 of Cr.PC. The Hon'ble Apex Court in case of D. Devaraja Vs. Owais Sabeer Hussain, (2020) AIR (SC) 3292, while dealing with issue of sanction for prosecution of public servant by referring to judgment in case of Virupaxappa Veerappa Kadampur vs The State Of Mysore, 1963 AIR 849 has observed as

under:

"It appears to us that the words under colour of duty have been used in s.161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in stroud's Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

6. In the instant case, the purported act of the Petitioners on the face of it is in discharge of their duties as public servant. Section 487 of Maharashtra Municipalities Act, provides for protection of person acting in discharge of duties under the Act. Thus, complaint without obtaining sanction of prosecution is not maintainable.

7. Though learned trial Court while passing order dated 18.08.2015 has held that complaint was filed against Petitioners even for the offences punishable under Sections 504 and 506 of IPC no charge-sheet has been filed against them, the question of that becoming ground for rejection of the application for discharge does not arise. Even otherwise these acts cannot be separated from other offences as they arose from one

incident.

8. Having regard to the relevant provisions of the Maharashtra Municipalities Act and considering the nature of duties of the present Petitioners, they are squarely covered by Section 197 of Cr.P.C. Hence, for want of sanction before prosecuting them, the complaint itself cannot sustain. Thus, it is a fit case for discharge of the Petitioners. The impugned orders passed by JMFC and learned Sessions Court cannot sustain.

9. In the result, Petition is allowed in terms of prayer clauses 'B' and 'C'. Petitioners stands discharged in R.C.C. No. 566/2006

(R.M. JOSHI, J.)

Malani