



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 140 of 2023

Shri Pramod Pralhadrao Tidke
Age : 49 Years, Occupation : Service
Office at Kaualyayan Nagar,
Ward No. 57, Post Parvati Nagar,
Nagpur, District : Nagpur

... Petitioner

- VERSUS -

(1) The State of Maharashtra
Through Police Station Officer
of Police Station, Ramnagar,
Wardha, District : Wardha.

(2) Ajay Kumar Shamrao Raut,
Age : 45 Years, Occupation : Service,
Sub-Divisional Agriculture Officer,
Wardha, District : Wardha.

(3) Mrs Archana Kharbade
Age : 42 Years, Occupation : Service
Accountant,
Sub-Divisional Agriculture Office,
Wardha, District : Wardha.

(4) Vaibhav Mangale,
Age : 39 Years, Occupation : Service,
Sheti Shala Coordinator,
Sub-Divisional Agriculture Office,
Wardha, District : Wardha.

... Respondents

Mr. Raheel Mirza, Advocate for the petitioner
Mr. A. M. Ghogre, A.P.P for respondent no. 1
Mr. Abhay Sambre, Advocate for respondent nos. 2 and 3
None for the respondent no. 4

CORAM : ANIL L. PANSARE J.

DATED : 31-10-2023

ORAL JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith.

3. The petitioner has challenged the judgment and order dated 19-12-2022 passed by learned Additional Sessions Judge, Wardha in Criminal Revision Application No. 7/2022 as also the order dated 6-1-2022 passed by learned Judicial Magistrate First Class, Court No. 5, Wardha in O.M.C. No. 334/2021.

4. Having heard both sides and having gone through the impugned orders and material placed before me, it appears that the petitioner – original complainant has lodged report on 8-11-2021 with Ramnagar Police Station, Wardha stating therein that respondent nos. 2 and 4 (but not respondent no. 3) along with other employees of Sub-Divisional Agriculture Office, Wardha have hatched conspiracy and thereby misappropriated amount of Rs. 55,000/- by committing forgery of bills showing expenses for conducting training camps for the agriculturists.

5. Since the police officials have not taken cognizance, the petitioner has filed complaint under Section 156(3) of the Code of

Criminal Procedure, 1973 (for short 'Code') before Judicial Magistrate First Class, Wardha against respondent nos. 2 to 4 making them as original accused nos. 1, 2 and 3 respectively. The petitioner shall be hereinafter referred to as the complainant. Respondent no. 2 shall be referred to as accused no. 1. Respondent no. 3 shall be referred to as accused no. 2 and respondent no. 4 as accused no. 3. Accused no. 1 is Sub-Divisional Agriculture Officer, Wardha. Accused no. 2 is/was working as Accountant in the office of Sub-Divisional Agriculture Officer, Wardha. Accused no. 3 is Coordinator for conducting training camps for the benefits of agriculturists.

6. The complainant states in his complaint that the accused no. 1 in connivance with accused nos. 2 and 3 has misappropriated amount of Rs. 55,000/- belonging to the Government by committing forgery of the bills in this regard. According to him, the accused persons have themselves prepared bogus bills and put bogus seal on the bills for misappropriating the amount.

7. Learned Judicial Magistrate First Class vide order dated 6-1-2022 has dismissed the complaint on the ground of absence of sanction under Section 197 of the Code. The complainant challenged the order before the revisional Court which was pleased to partly allow the revision. Revisional Court has dismissed the complaint as against

accused nos. 1 and 2 but has allowed the same as against accused no. 3 and directed the In-charge of Police Station, Ramnagar to register the crime for the offences under Sections 420, 467, 468 and 471 of the Indian Penal Code. Revisional Court has dismissed the challenge in respect of accused nos. 1 and 2 on the ground of absence of sanction. The complainant is aggrieved by this order as well and hence, the present revision.

8. Learned counsel for the complainant submits that sanction under Section 197 of the Code is not required where the offence alleged is in respect of fabrication of record and misappropriation of public fund. In support, he has taken aid of the judgment of Hon'ble Supreme Court in the case of ***Shamboo Nath Misra Vs. State of U.P and others [1997 AIR SCW 1938]*** wherein the Hon'ble Supreme Court has held in paragraph no. 5 as under :

“5. The question is : when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties ? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these

circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.”

Thus the Supreme Court has held that in the matters relating the offence of fabrication of record and misappropriation of public fund by public servant, the act itself cannot be said to be performed in discharge of official duties and, therefore, sanction under Section 197 of the Code will not be required.

9. Learned counsel for the accused nos. 1 and 2 submits that at the first instance, the complainant has not levelled any allegations against the accused no. 2 when he lodged several reports with police. He has named various persons in various complaints in which accused no. 1 was common. In some complaints, he has blamed accused nos. 1 and 3 as also other officers and in some complaints, he has blamed accused no. 1 and other officers. However, in the complaint under Section 156(3) of the Code, for the first time, the complainant has levelled allegations against accused no. 2 and, therefore, the complaint is not maintainable. He further submits that the enquiry report filed by the complainant along with complaint reveals that it is accused no. 3 who has prepared bogus bills. The enquiry committee has, however, in the conclusion suddenly blamed accused nos. 1 and 2 of intentionally not verifying and inspecting the bills while submitting the same and

having helped accused no. 3 in misappropriation of Rs. 55,000/-. This finding, according to Mr. Abhay Sambre, learned counsel for accused nos. 1 and 2, is without assigning any reason and, therefore, cannot be looked into. He further submits that during the period when the bills were submitted and sanctioned, the accused no. 2 was on leave for the period from 1-4-2020 to 15-6-2020 and the bills were sanctioned on 28-5-2020. This fact has been suppressed by the complainant while lodging report.

10. Learned Additional Public Prosecutor would submit that since there are no direct allegations against accused nos. 1 and 2, the question of their involvement may not arise. Nonetheless he would submit that these two officers, being Government servants, sanction under Section 197 of the Code is mandatory.

11. I do not find substance in the submissions put forth by learned counsel appearing for accused nos. 1 and 2 so also learned Additional Public Prosecutor in as much as it is well settled that while examining the complaint under Section 156(3) of the Code, the Court has to *prima facie* come to the conclusion that the complaint discloses commission of cognizable offence and once satisfied, to direct the investigating agency to register first information report and proceed with the investigation. The trial Court is not required to go into every

detail and in any case cannot consider the case which was not put forth before it. In that sense, there is no reason for the trial Court to even think of absence of the accused no. 2 at the relevant time. This may be the defence that could be put forth by accused no. 2 before investigating agency or the trial Court, as the case may be, as and when she is summoned to appear before them.

12. So far as absence of name of accused no. 2 in the complaint made before police officials, the enquiry report which is part of the complaint itself indicates that accused nos. 1 and 2 have intentionally not verified and inspected the bills and thereby helped accused no. 3 to misappropriate amount of Rs. 55,000/-. That being so, the complainant is fully justified in making accused nos. 1 to 3 as non-applicants before the trial Court.

13. Then comes the findings of enquiry committee, which according to Mr. Abhay Sambre, learned counsel for accused nos. 1 and 2 is sans any reason. Firstly, this Court cannot go into these aspect in as much as the enquiry report is not under challenge. Secondly, learned counsel for the petitioner/complainant submits that this report has not been challenged by the accused persons. Thus the finding has attained finality. The accused persons cannot now make grievance against said finding. Be that as it may, the fact remains that the

averments made in the complaint as also in the enquiry report disclose that the accused persons have misappropriated amount of Rs. 55,000/- by preparing false and bogus bills.

14. The Hon'ble Supreme Court has in unequivocal terms held that where the allegation of fabrication of record and misappropriation of public fund by public servant, the sanction under Section 197 of the Code is not required. In these circumstances, the order passed by both the Courts below, rejecting or dismissing the complaint only on the ground of absence of sanction is perverse and requires correction.

15. At this stage, learned counsel for the accused nos. 1 and 2 submits that the matter may be remanded back for consideration afresh. To my mind, since the revisional Court has taken note of the fact of absence of accused no. 2 at the relevant period and since the complaint made before the police authorities did not disclose her name but includes name of other officers who are not made party to the complaint, it will be appropriate to remand the matter back to the trial Court for consideration afresh in accordance with law. The trial Court shall consider the application in the light of the law laid down by the Hon'ble Supreme Court in the case of *Kailash Vijayvargiya Vs. Rajlakshmi Chaudhari and ors.* [(2023) 6 S.C.R. 135] and *Manharibhai*

Muljibhai Kakadia and anr. Vs. Shaileshbhai Mohanbhai Patel

[(2012) 8 S.C.R. 1015]. Hence, following order.

ORDER

(i) The petition is partly allowed.

(ii) The judgment and order dated 19-12-2022 passed by the Additional Sessions Judge, Wardha in Criminal Revision Application No. 7/2022 as also the order dated 6-1-2022 passed by the Judicial Magistrate First Class, Court No. 5, Wardha in O.M.C. No. 334/2021 are quashed and set aside.

(iii) O.M.C. No. 334/2021 is restored on the file of the Judicial Magistrate First Class, Court No. 5, Wardha for consideration afresh, in accordance with law.

(Anil L. Pansare, J.)

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