



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL WRIT PETITION NO. 400 OF 2023

DR. SWAPNIL BHARAT MORE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. Yuvraj V. Kakde, Advocate for the Petitioner

Mr. V. M. Jaware, APP for the Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 04.12.2024

PER COURT :-

1. Heard at length, the learned Counsel for the Petitioner and the learned APP for the Respondent/State.

2. By the present Petition, the Petitioner has put forth prayer clauses (B), (C) and (D) as under:-

“(B) The Hon’ble High Court may kindly be pleased to issue appropriate writ, order or directions, in like nature thereby quash and set aside the RCC No.171/2022 pending before the learned Judicial Magistrate First Class, Paithan, Dist. Aurangabad and for that purpose issue necessary orders.

(C) The Hon’ble High Court may kindly be pleased to issue appropriate writ, order or directions, in like nature thereby quash and set aside the impugned order dated

20.02.2023 passed by the learned Judicial Magistrate First Class, Paithan below Exh.1 in R.C.C. No.171 /2022 and for that purpose issue necessary orders.

(D) Pending hearing and final disposal of this Criminal Writ Petition grant say to the further proceedings and inquiry as per the impugned order dated 20.02.2023 passed by the learned Judicial Magistrate First Class, Paithan below Exh.1 in R.C.C. No.71/2022 and for that purpose issue necessary orders.”

3. Needless to say that Respondent No. 2/complainant namely Anita Nitin Wankhede, filed a private complaint bearing R.C.C. No. 71 of 2022, alleging that she is a social worker. The Crime No.353 of 2021 registered against the accused persons, one Chandrakant Shelke and Dr. Swapnil More, on the report lodged by Shri Ganesh Vinayakrao Jadhav @ Pappu, for the offence punishable under Section 7A and 12 of the Prevention of Corruption Act, 1988. It is further alleged that both the accused persons are always getting together with the sand mafia. So also, by taking benefit of government holidays fell on 23rd and 24th October 2021, on 23.10.2021, the accused No.1 Chandrakant Shelke, the Tahsildar, Paithan, Taluka Paithan, submitted an application for leave with effect from 22.10.2021 to 25.10.2021. The complainant further alleged about illegal activities of both the accused persons by misusing their official status and getting to the sand mafia. Hence, prayed for action

against both the accused persons for the offences punishable under Sections 420, 468, 470, 471 read with Section 34 of I.P.C.

4. On 18.07.2022, the learned Magistrate recorded verification of the complainant. Since the learned J.M.F.C. found that, the inquiry is necessary, therefore, he passed an order on 20.02.2023 and directed inquiry under Section 202 of Cr.P.C. The said inquiry report yet to be submitted by the Police Inspector, Paithan Police Station. However, the present Petitioner approached this Court by invoking jurisdiction of this Court under Article 226 and 227 read with Section 482 of Cr.P.C. and prayed for quashment of complaint as well set aside order dated 20.02.2023, whereby the learned Magistrate directed report from the concerned police station u/s 202 of Cri. P. C.

5. The learned Counsel for the Petitioner placed reliance on series of judgments, as under:-

- (i) Debashish Chakrabarty & another Vs. State of Maharashtra and others, Criminal W.P. No.4765 of 2014;
- (ii) D. Devaraj Vs. Owais Sabeer Hussain, AIR 2020 SC 3292;
- (iii) State of Orissa & others Vs. Ganesh Chandra Jew, AIR 2004 SC 2179;

- (iv) Maksud Saiyed Vs. State of Gujarat & others, (2008) 5 SCC 668;
- (v) Anil Kumar Vs. M. K. Aiyappa, 2014 CRI. L. J. 1;
- (vi) Mrs. Priyanka Srivastava Vs. State of U.P., 2015 AIR SCW 2075;
- (vii) Pandharinath Narayan Patil Vs. State of Maharashtra, 2016 CRI. L.J. 146;
- (viii) General Officer Commanding and Ors. Vs. CBI and Ors., AIR 2012 SC 1890.

6. I have gone through each and every judgment. However, none of these judgments deal about maintainability of the Petition challenging the order passed under Section 202 of Cr.P.C., by the learned J.M.F.C. Not only this, but the impugned order dated 20.02.2023 does not speak about application of mind by the judicial officer and no process has been issued against the Petitioner/ original accused. Therefore, to my mind, as on today, no cause of action arises against the accused to challenge the said order. Therefore, the Writ Petition is itself premature.

7. The learned Counsel for the Petitioner canvassed in vehemence that the present Petitioner/original accused is a public servant and for prosecution of the Petitioner no sanction has been obtained under Section 195 of Cr.P.C. However, whether the sanction

has been obtained or not requires to be considered by the learned Magistrate while considering the case for issuance of process. Therefore, at this juncture, the Petitioner has no right to challenge the impugned order on the ground that no sanction was obtained. Needless to say that, the Petitioner has also not stated the source of information how he came to know about pendency of complaint though he has not been served with the process and no process has been issued by the learned Magistrate.

8. It would be worthwhile to mention here that, this Court repeatedly asked the counsel for the petitioner that, present petition is premature and the petitioner will have right to challenge the order of issuance of process, if in case the learned Magistrate passes such an order after application of mind as well as considering the report submitted by the concerned Police Station. However, in spite of giving such understanding and even after giving warning to impose heavy cost on the Petitioner, if the matter is dismissed, the learned counsel for the petitioner repeatedly continued arguments for more than one and half hours by making allegation that this court is not hearing him and wasted the time of other litigants who are in queue to receive the justice and stalled the court proceeding. Therefore, in

my view, this is the fit case to dismiss the Writ Petition with cost. Therefore, the Writ Petition is dismissed with cost of Rs.50,000/-, which shall be payable in the account of the District Legal Aid Services Authority, Aurangabad. The petitioner shall deposit the said cost from his pocket on or before 31.12.2024, failing which, the Collector, Aurangabad is hereby directed to recover said amount against the petitioner being arrears of land revenue within the meaning of Land Revenue Code, 1966. After deposit of said amount, the Secretary, District Legal Aid Services Authority, Aurangabad, is hereby directed to forward Rs.25,000/- to the government approved Old Aged Home, Aurangabad.

[Y. G. KHOBRADE, J.]

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