



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

CRIMINAL APPLICATION NO.1371 OF 2020

Mahesh S/o Mohan Fulpagare,
Age-52 years, Occu:Service,
R/o-Plot No.36, G.D. Mali Housing
Society, Near Nhavi Colony,
Vidhya Nagari, Deopur,
Dhule, Tq. and Dist-Dhule.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Ashok S/o Shrawan Patkar,
Age-55 years, Occu:Business,
R/o-17, Patkar Nagar, Deopur,
Dhule, Tq. and Dist-Dhule.

...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.3235 OF 2021

Mahesh S/o Mohan Fulpagare,
Age-53 years, Occu:Service,
R/o-Plot No.36, G.D. Mali Housing
Society, Near Nhavi Colony,
Vidhya Nagari, Deopur,
Dhule, Tq. and Dist-Dhule.

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R/o-17, Patkar Nagar, Deopur,
Dhule, Tq. and Dist-Dhule.

...RESPONDENTS

...
Mr. D.S. Manorkar Advocate for Applicant in both
Applications
Mr. A.D. Wange, A.P.P. for Respondent No.1 in both
Applications.
Mr. A.G. Talhar Advocate for Respondent No.2 in both
Applications.

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**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : 27th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Application No.1371 of 2020 has been filed initially, for quashing the First Information Report vide Crime No.79 of 2020 registered with Dhule City Police Station and after amendment, for quashing the proceedings in R.C.C. No.1020 of 2023, pending before the learned Chief Judicial Magistrate, Dhule, for the offence punishable under Sections 465, 466, 468, 471, 474, 420, 120-B read with Section 34 of the Indian Penal Code.

2. So far as Criminal Application No.3235 of 2021 is concerned, initially it has been filed for quashing the First Information Report vide Crime No.62 of 2021 registered with Dhule City Police Station and after amendment, for quashing the

proceedings in R.C.C. No.119 of 2024 pending before the learned Chief Judicial Magistrate, Dhule, for the offence punishable under Sections 463, 464, 465, 466, 467, 468, 469, 470, 471, 474, 420, 120-B read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate Mr. Manorkar for the applicant, learned APP Mr. Wange for respondent No.1 and learned Advocate Mr. Talhar for respondent No.2.

4. Both the applications are by the same person and it is not in dispute that on the day when the First Information Report was lodged against the applicant, he was working as Taluka Inspector of Land Records. The applicant has contended that his appointment was on 3rd August 1991, as clerk-cum-surveyor. Then in the year 1997, he was promoted as Nimtandar and then in the year 2004, the applicant was again promoted as Assistant Head and thereafter he was promoted to the Officer cadre.

5. So far as Criminal Application No.1371 of 2020 is concerned, it has been submitted on behalf of the applicant that respondent No.2 had lodged the First Information Report, which was in fact the outcome of his private complaint bearing Criminal Misc. Application No.323 of 2019. In the said application, present

respondent No.2 had prayed for directions to the investigating officer for investigating the matter under the provisions of Section 156(3) of the Code of Criminal Procedure. The learned Judicial Magistrate First Class, Dhule by order dated 17th March 2020, had allowed the said application and directed the Police Inspector, City Police Station, Dhule to investigate the matter under Section 156(3) of the Code of Criminal Procedure.

6. So far as Criminal Application No.3235 of 2021 is concerned, it has been submitted on behalf of the applicant that respondent No.2 had lodged the First Information Report, which was the outcome of his private complaint bearing Criminal Misc. Application No.421 of 2019, wherein the directions were sought for investigation under Section 156(3) of the Code of Criminal Procedure and the same Judicial Officer by order dated 4th March 2021, allowed the said application and gave directions to the police to make investigation under Section 156(3) of the Code of Criminal Procedure.

7. As a result of the aforesaid orders, the First Information Reports were registered and investigation was done. Now, even the charge-sheet is filed against the applicant in both the matters. In fact, respondent No.2 claims to be the trustee of one

trust, namely, Priyadarshani Charitable Trust, Dhule. There were two immovable properties involved i.e. Survey Nos. 42/2 and 44/7. By registered gift deed dated 18th September 1992, area admeasuring 21,000 square feet was transferred to the trust. According to the complainant – respondent No.2, the office of city survey had made inquiry and after conducting panchnama, the mutation in the record of rights was carried out. Thereafter, there was no transfer of the said property to anybody by the trust. However, original accused Nos.1 to 3 i.e. including present applicant, had taken up a false mutation entry in the name of one Snehal Gopal Kulkarni and others vide Mutation Entry No.7062, prepared on 16th November 2018. There was mention about the Judgment and order passed by the learned Civil Judge, Senior Division, Dhule in Special Civil Suit No.53 of 2003 in the said mutation entry. According to the complainant, the property of the trust was not the subject matter in the Civil Suit. Ownership or possession was not decided in favour of said Snehal Kulkarni. Document in respect of CTS No.1888 was prepared by the accused persons in spite of knowledge that the said document is bogus. Present applicant had sanctioned the said mutation entry and therefore, the complainant says that there was forgery, cheating by way of conspiracy.

8. Learned Advocate for the applicant says that the facts on record would show that there was dispute in respect of ownership over the property and even sale deeds were executed. There was prayer in the said Special Civil Suit that those sale deeds were not binding on the plaintiffs. On the date of Criminal Miscellaneous Application, the said Suit was still pending. In fact the record also shows that the present applicant has sought an opinion from the District Government Pleader, Dhule vide letter dated 29th October 2018 after the application was made by original accused No.1 on 1st August 2018 for mutation. The opinion was given by the District Government Pleader, Dhule on 3rd November 2018 and thereafter the mutation has been taken. Therefore, the present applicant had sought the legal opinion and then acted. So, his activity should have been taken as protected. In view of pendency of the Civil Suit in which even the appeal was preferred challenging the order, the learned Magistrate ought not to have held that cognizable offence was made out requiring investigation under Section 156(3) of the Code of Criminal Procedure. As the First Information Reports are based on wrong presumption of law, not only the First

Information Reports but the entire proceedings deserve to be quashed and set aside.

9. Learned APP as well as learned Advocate for respondent No.2 have strongly opposed the applications and submitted that the learned Magistrate, before passing the orders of investigation under Section 156(3) of the Code of Criminal Procedure, had considered that respondent No.2 had made application for grant of sanction to prosecute, but it was not replied and therefore, when the investigation is done after taking into consideration all the legal requirements and now even the charge-sheet is produced, let the applicant face the trial. Learned Advocate for respondent No.2 also contended that though the applicant was having knowledge and could have seen the documents, has not applied his mind. There was decree of the Civil Court and therefore, such document ought not to have been created.

10. At the outset, we would like to go on the law point. It is not in dispute that as regards the present applicant is concerned, sanction to prosecute was necessary as contemplated under Section 197 of the Code of Criminal Procedure. By way of Maharashtra Amendment in 2016, Section 197 as well as Section 156(3) of the Code of Criminal Procedure were amended. The

amendment in Section 156(3) of the Code of Criminal Procedure prescribed that even before passing the order under the said Section, the concerned Magistrate should consider as to whether sanction to prosecute has been obtained or not. The amendment in Section 156(3) of the Code of Criminal Procedure gave deeming provision. The effect of the same is that if a complainant shows that he had applied to the competent authority for according sanction to prosecute a Government servant and then for the period of 90 days thereafter no reply is given, then it should be taken as deemed sanction. This provision i.e. consideration of such permission or sanction to prosecute prior to the issuance of order for investigation under Section 156(3) of the Code of Criminal Procedure is mandatory. Further, the concerned Magistrate should consider that the application for according sanction is filed by the complainant before the competent authority, that means, the competent authority to accord the sanction. The complainant is not supposed to file an application before the authority or superior who is not competent to accord sanction in respect of prosecuting a Government servant and then take advantage of deeming provision. In other words, it is the duty of the complainant to show that he had made application for according

sanction to prosecute a particular Government servant to the competent authority, that means the authority who has power to appoint and remove the said Government servant.

11. In the present case, in both the orders by which the same Judicial Magistrate had allowed the applications and directed investigation to be made under Section 156(3) of the Code of Criminal Procedure, had considered that an application for sanction to prosecute the present applicant, who was made accused No.2, was filed before the Settlement Commissioner and Director, Land Record, Pune. In respect of Criminal Application No.1371 of 2020, in which basic order under Section 156(3) of the Code of Criminal Procedure has been passed in Criminal Misc. Application No.323 of 2019, the application for sanction was made on 22nd July 2019 and the said application was delivered to the Settlement Commissioner and Director, Land Records, Pune on 24th July 2019 and the order of directing investigation to be made, was passed on 17th March 2020. Whereas, in another matter i.e. Criminal Application No.3235 of 2021, the complainant had sought permission by letter dated 19th August 2019 from the Settlement Commissioner. The said letter was received by the office of the Settlement Commissioner on 21st August 2019 and the order therein i.e. in Criminal Misc.

Application No.421 of 2019, under Section 156(3) of the Code of Criminal Procedure has been passed on 4th March 2021. It is to be noted that the designation of the applicant in the complaint / application was given as "Officer in TILR Office". Therefore, it ought to have been considered by the learned Magistrate, as to whether the Settlement Commissioner, who is certainly the superior officer of the applicant, had the power to appoint and remove the applicant or not. The learned Advocate for the applicant is making available the photocopy of promotion order passed by the Government of Maharashtra on 17th September 2007, wherein the present applicant was promoted from Class-III post to Class-II post and therefore, it is not in dispute that the State Government is the removing authority. The hierarchy in the office is not relevant for according sanction to prosecute, but it depends upon the power to appoint and remove from service. Therefore, when respondent No.2 had made application to the wrong authority and the wrong authority / the authority who was not competent, had not taken any action on the application filed by respondent No.2 for more than 90 days, the same will not give the deeming effect. In other words, inaction of an authority who is not competent to accord sanction, will not give advantage to respondent No.2 to take advantage of

the deeming provision in Section 156(3) of the Code of Criminal Procedure. Here, in the present case, there was no sanction at all to prosecute the applicant nor there was a deemed sanction. The learned Magistrate could not have passed the order directing the investigation to be made under Section 156(3) of the Code of Criminal Procedure. The First Information Reports based on the said orders cannot be allowed to sustain as there is inherent defect, and therefore, even the proceedings will not be allowed to proceed further. It would be unjust to ask the applicant to face the trial on the basis of such inherent defect. Therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

12. Hence, we pass following order:-

ORDER

(I) Both the Applications i.e. Criminal Application Nos. 1371 of 2020 and 3235 of 2021, stand allowed.

(II) The proceedings in R.C.C. No.1020 of 2023, pending before the learned Chief Judicial Magistrate, Dhule for the offence punishable under Sections 465, 466, 468, 471, 474, 420, 120-B read

with Section 34 of the Indian Penal Code arising out of the First Information Report vide Crime No.79 of 2020 registered with Dhule City Police Station, Dhule, stands quashed and set aside as against the applicant – Mahesh S/o Mohan Fulpagare.

(III) Further, the proceedings in R.C.C. No.119 of 2024 pending before the learned Chief Judicial Magistrate, Dhule, for the offence punishable under Sections 463, 464, 465, 466, 467, 468, 469, 470, 471, 474, 420, 120-B read with Section 34 of the Indian Penal Code arising out of the First Information Report vide Crime No.62 of 2021 registered with Dhule City Police Station, Dhule, stands quashed and set aside as against the applicant – Mahesh S/o Mohan Fulpagare.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC24