



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1441 OF 2024

Shankar S/o Pandurang Deshmukh,
Age-30 years, Occu:Agriculture and Business,
R/o-Mahindra Nagar, Pardeshwar Road,
District-Parbhani.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) Superintendent of Police,
Parbhani, District-Parbhani,
- 3) Special Executive Magistrate
& Police Inspector, Local Crime Branch,
Parbhani, Office of Superintendent
of Police, Parbhani.

...RESPONDENTS

...
Mr. Sushant V. Dixit Advocate for Petitioner.
Mr. S.V. Hange, A.P.P. for Respondent Nos. 1 to 3.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 12th AUGUST, 2024

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

1. The petitioner invokes the constitutional powers of this

Court under Article 226 and 227 of the Constitution of India read with inherent powers under Section 482 of the Code of Criminal Procedure to challenge the proceedings of Chapter Case No.56 of 2024 pending before the Special Executive Magistrate, Parbhani against the petitioner under Section 110 of the Code of Criminal Procedure. Further prayer is that respondent No.3 be prohibited from proceeding and / or deciding the said Chapter Case.

2. The first and foremost fact is that when respondent No.3 is empowered to decide the Chapter Case, certainly he cannot be prohibited, as it would amount to restrain him from discharging his legal duty.

3. Another fact to be noted is that what is challenged by the petitioner is the proceedings in Chapter Case No.56 of 2024, however, proper documents have also not been produced. It was tried to be submitted that though requested, the necessary documents have not been given by respondent No.3. It is to be noted that what has been filed with Annexure-A is the application under the Right to Information Act made by the present petitioner to the Police Officer. The said information has been supplied, though according to the petitioner it has been withheld for no reason at all. What was asked was, as to on what

basis the action was initiated under Section 110 of the Code of Criminal Procedure. To that extent, the information has been given. But the other documents i.e. notice and the reply given by the petitioner, have not been supplied.

4. Learned Advocate for the petitioner is relying on the decisions in: *(i) Lalookhan Haideralikhan Vs. M.M. Kamble, Special Executive Magistrate, Byculla Division, Bombay and others, 1996 Cri. L.J. 801, (ii) Surendra Ramchandra Taori vs. State of Maharashtra and others, 2001(4) Mh.L.J. 601, (iii) Rajesh s/o Suryabhan Nayak vs. State of Maharashtra and others, 2006(5) Mh. L.J. 243, (iv) Manu Vaish @ Manoj Kumar vs. State of U.P. and others, 2012 SCC Online All 2875 and (v) Jitendra Dixit vs. State of U.P. and others [2021:AHC-LKO:589].*

We are of the opinion that these citations are not applicable to the present case, for the simple reason that the petitioner has not produced the necessary documents and another fact is that the said action can be challenged under Section 397(1) of the Code of Criminal Procedure before the learned Sessions Judge. The explanation to Section 397(1) of the Code of Criminal Procedure states that all Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge. The

Sessions Judge may call for and examine the record of any proceedings before any inferior Criminal Court situated within its jurisdiction.

5. Prayer clause (A) to the Petition states that the record and proceedings of the said Chapter Case be called and its legality and validity should be examined. Therefore, when efficacious remedy is available under the said section and the writ jurisdiction as well as inherent powers of this Court can be exercised sparingly, we are of the opinion that no case is made out for exercise of the powers under Article 226 and 227 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure.

6. The Writ Petition stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE