

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 348/2024

Sandeep s/o. Gangaram Borkar Vs. State of Maharashtra and Anr.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. M. I. Dhattrak, Advocate for Petitioner.
 Mr. Amit Chutke, A.P.P. for Respondent/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 22/04/2024.

. Heard.

2. By this petition the petitioner is seeking to quash First Information Report in Crime No.920/2022 registered with Police Station Wani, District Yavatmal for the offence punishable under Sections 466, 468 read with Section 34 of the Indian Penal Code, 1860.

3. The petitioner was Chief Officer of Municipal Council, Wani at relevant time and now he is Chief Officer of Kamptee, Nagpur. Learned Counsel for the petitioner took primary objection to the registration of the First Information Report by stating that the learned Magistrate without prior sanction to prosecute in terms of Section 197 of the Code of Criminal Procedure, 1973 (Code) has issued direction which is against the Maharashtra amended proviso to Section 156(3) of the Code.

4. The matter arose out of private complaint filed by the respondent No.2. The learned Magistrate vide order dated 03.12.2022 has directed concerned police to register First Information Report in terms of Section 156(3) of the Code and to investigate accordingly. In turn, the crime has

been registered against total 26 persons including petitioner, who was public servant.

5. The learned counsel for petitioner has attracted our attention to the amended proviso to section 156(3) of the Code. The State has inserted a proviso by way of amendment which reads as below:-

“Section 156(3)....

Maharashtra – In its application to the State of Maharashtra, in section 156, after sub-section (3), add the following provisos, namely:-

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or under any law for the time being in force.

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority” – Maharashtra Act 33 of

2016, section 2.”

6. The first proviso also grants protection to the existing or even past public servants. The second proviso has inbuilt deeming provisions, however, there is no pleading whether the complainant has applied for sanction.

7. In the circumstances, apart from their contentions, we deem that the objection raised by the petitioner goes to the root of the cause for registration of crime.

8. Issue notice to the respondents, returnable after six weeks.

9. Learned A.P.P. waives service of notice for respondent/State.

10. In the meantime, the investigation may go on, but charge-sheet shall not be filed against the present petitioner without obtaining leave of this Court.

11. In the above peculiar facts, no coercive action shall be taken against the petitioner, till further orders of this Court.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)