



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.310 OF 2023

Shahadeo S/o Rambhau Pokale,
Age-54 years, Occu:Police Inspector,
At present R/o-Sawede,
Taluka and District-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
(Through Vajirabad Police Station,
District-Nanded),
- 2) Kamal Vishwanath Shinde,
Age-35 years, Occu:Assistant
Police Inspector,
R/o-Police Welfare Division,
Vajirabad, Nanded,
Taluka and District-Nanded.

...RESPONDENTS

...
Mr. Sohail Subhedar Advocate h/f. Mr. Nilesh S. Ghanekar
Advocate for Applicant.
Mr. P.S. Patil, Additional P.P. for Respondent No.1.

...
**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 12th AUGUST, 2025

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

1. Present Application has been filed, initially for quashing the

First Information Report (for short "the FIR") vide Crime No. 193 of 2022, registered with Vajirabad Police Station, District-Nanded on 7th June 2022, for the offence punishable under Sections 409, 420, 467, 468, 471, 477 read with Section 34 of the Indian Penal Code, and later on by way of amendment, for quashing the proceedings in R.C.C. No.89 of 2024, pending before the learned Chief Judicial Magistrate, Nanded.

2. Heard learned Advocate Mr. Sohail Subhedar holding for Mr. Ghanekar Advocate for Applicant and learned Additional P.P. Mr. P.S. Patil, for Respondent No.1.

3. Learned Advocate for the applicant has taken us through the entire charge-sheet and submits that the applicant is a Police Inspector and presently serving at Sawede, Taluka and District-Ahmednagar. The FIR has been lodged by Assistant Police Inspector Kamal Vishwanath Shinde, attached to Police Welfare Department, Nanded. Applicant was then serving in Reserve Police Force as Police Inspector at Nanded. In the FIR, It is stated that inquiry was made in respect of the working of one police head constable Ramkisan Gangaram Jakulwar and the present applicant for the period from 28th February 2019 to 31st July 2021, under the orders of District Superintendent of Police,

Nanded. It was then found out that there is misappropriation of Rs.10,41,735/- while purchasing the articles for the police subsidiary canteen and misappropriation of Rs.10,36,377/- in purchase and distribution of Raymond cloth. Thus, there was alleged misappropriation of Rs.20,78,112/-. According to the FIR, when the visit was made by the inquiry committee, the computer in the canteen was not working. The swipe machine was also not working and it appears that the said transactions were taking place offline. In fact it was so pretended that those were not working but in fact the computer as well as the swipe machine were in working condition. Intentionally those were kept not operational. Accounts were not properly maintained and certain prior sanctions for purchase of articles were not taken. Those were the allegations against Mr. Jakulwar and as against the present applicant, it was stated that said Jakulwar was illegally appointed by the present applicant. The applicant was asked to pay the outstanding bill of the police canteen but he has not cleared the same. Applicant has not obtained prior permissions, had not visited the canteen and not supervised the financial transactions. Certain amounts were collected from the persons in the police department towards the cloth, however, it was not distributed.

4. Learned Advocate for the applicant states that the Deputy Superintendent of Police (Home), Police Superintendent Office, Nanded and the Police Inspector, Police Welfare Division, Nanded, are the President and Secretary of the Police Welfare Division. The applicant was not the secretary of the committee but he was only the member of the canteen supervising committee. Only co-accused Ramkishan Jakulwar was responsible for the alleged misappropriation and he was appointed on oral directions given by the Deputy Superintendent of Police, Nanded. The audit which is carried out by the committee consisting of Deputy Superintendent of Police (Home) and Police Inspector, Police Welfare Division, is illegal as they were the President and Secretary of Police Welfare Division. Said Jakulwar had filed an application dated 7th September 2021, thereby admitting misappropriation of the amount by him. Amount of Rs.26,000/- was got deposited from him and he has undertaken to pay the remaining amount by selling his house. It is learnt that another application has been given by co-accused Jakulwar stating that the transaction of sale of his house came to be cancelled. In the entire charge-sheet, it is not stated as to how the present applicant is involved and therefore, it would be unjust to ask the applicant to face the trial.

5. Per contra, the learned APP strongly opposed the Application and submitted that the entire charge-sheet would show that the documents have been collected and as regards the present applicant is concerned, there was specific role attributed to him. Now, how the misappropriation by main accused has been abetted or there was common intention of the present applicant, would be proved at the time of trial.

6. If we consider the FIR lodged by the informant and the other documents on record, especially statement of one Manisha Narendra Pimpale, Assistant Accounts Officer, Office of the District Superintendent of Police, Nanded, it would be seen that in respect of allegation No.1 regarding illegal appointment of Mr. Jakulwar and no prior permission has been sought, we would say that at the most the departmental inquiry can be held. Further from the document on record i.e. report by the committee itself, it can be seen that the present applicant appears to be the only member and not the President or the Secretary. Only the applicant, in such situation, cannot be held responsible for the appointment of Mr. Jakulwar, when the President, Secretary and other members were also duty bound to control and supervise all the activities carried out in the canteen.

7. The second allegation is that it was directed that the cashbook entries should be updated but those were not updated and report has not been given in respect of misappropriation committed by Mr. Jakulwar. Interestingly the present applicant appears to have been posed as member secretary of the committee, whereas the report of the committee states otherwise. Even in this respect, at the most there can be departmental inquiry, as no criminality is directly involved.

8. As regards allegation No.3, now here the applicant has been stated to be the member of the canteen committee and it is stated that he was supposed to visit the canteen from time to time and inform about the misappropriation and illegalities in the canteen affairs. It is then stated that when no report has been given, the present applicant has mute consent for the same. This appears to be the inference drawn by the superiors and at the most it will involve departmental inquiry.

9. The last and fourth allegation is on the basis of statement of Jakulwar dated 2nd August 2021, stating that the applicant has taken material from the police canteen without paying for it. At the most, this would give rise to the recovery of the amount.

Here also then it is stated that for this irregularity the applicant has given mute consent. Criminal action cannot be taken on the basis of surmises and conjectures.

10. Here, the prosecution is also in respect of offence under Section 409 of the Indian Penal Code and all the acts are stated to be either done or not done in the official capacity of the applicant. In respect of offence under Section 409 of the Indian Penal Code, the prosecution should show that previous sanction as contemplated under Section 197 of the Code of Criminal Procedure was obtained. No doubt the legal position stands that for offence under Section 420 of the Indian Penal Code, it cannot be the part of the job of a Government servant to cheat, and therefore, in that case the previous sanction is not required. But that cannot be the same thing when it comes to Section 409 of the Indian Penal Code. To sanction the bills or forward it for sanction or withdrawal of the amount and/or to visit and supervise the functioning of the canteen, was part of the official duty of the applicant and therefore, the sanction was necessary.

11. Here, we would like to take note of the legal position that was carved out in *Om Prakash Yadav Vs. Niranjan Kumar*

Upadhyay and Others, [2024 SCC Online SC 3726], which reads thus :

"The legal position that emerges from the discussion of the aforesaid case laws is that:

(i) There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. Therefore, the question whether sanction is required or not is one that may arise at any stage of the proceeding and it may reveal itself in the course of the progress of the case.

(ii) There may also be certain cases where it may not be possible to effectively decide the question of sanction without giving an opportunity to the defence to establish that what the public servant did, he did in the discharge of official duty. Therefore, it would be open to the accused to place the necessary materials on record during the trial to indicate the nature of his duty and to show that the acts complained of were so interrelated to his duty in order to obtain protection under Section 197 CrPC.

(iii) While deciding the issue of sanction, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the material on record available at the time when such a question is raised and falls for the consideration of the Court.

(iv) Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to be adduced before the appropriate trial court."

12. In *Shriniwas Reddy Kankanala Vs. State of Maharashtra and Another*, [2024(4) Mh.L.J. (Cri.) 510], this Court has considered the Three Judge Bench decision in *B. Shaha and Others Vs. M/s Kochar*, [(1979) 4 SCC 177]. Therefore, we should take into consideration it as the law of precedent makes it mandatory to consider the decision of a Three Judge Bench of the Hon'ble Apex Court and in which, it is held thus :

"The words "Any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in section 197(1) of the Code, are capable of a narrow as well as wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

13. Further, in *G.C. Manjunath and Others Vs. Seetaram*,

[2025 0 SC 582], also, **B. Shaha and Others (supra)** has been referred. We must understand as to why the protection is given to a public servant from prosecution, thereby making the sanction to prosecute under Section 197 of Cr.P.C., compulsory. It has been observed in **G.C. Manjunath and Others (supra)** in Paragraph No.30 that :

"A careful reading of Section 197 of the Cr.P.C. unequivocally delineates a statutory bar on the Court's jurisdiction to take cognizance of offences alleged against public servants, save without the prior sanction of the appropriate Government. The essential precondition for the applicability of this provision is that the alleged offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197 of the Cr.P.C., however, is not absolute and it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the Cr.P.C."

14. The provision has been made to protect the public servants from malicious prosecution, otherwise it will not be possible to a public servant to discharge his duties without fear or favour. The object and purpose of this section was also considered in **Gurmeet Kaur Vs. Devender Gupta, [2024 SCC Online SC 3761]**

and it has been noted in *G.C. Manjunath and Others (supra)*. It has been therefore, stated that :

"The guiding principle governing the necessity prior sanction stands well crystallized. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of the sanction is obviated. Conversely, where there exists even a reasonable link between act complained of and the official duties of public servant, the protective umbrella of Section 197 of the Cr.P.C. and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a sine qua non, regardless of whether the public servant exceeded scope of authority or acted improperly while discharging his duty."

15. Thus by taking note of the legal position, it is crystal clear that such sanction is mandatory in case of a Government servant. Further, though at present there is no document showing that the trial Court has taken cognizance of the offence, yet it can be so presumed, because the charge-sheet has been filed in the year 2024. The trial Court would not have waited for taking cognizance for about a year and therefore, the cognizance appears to have been taken by the learned trial Court in contravention of the mandate, or in other words, in spite of specific bar to take cognizance in absence of the sanction, the cognizance has been taken and therefore considering all these

aspects and the material in the charge-sheet, it would be an abuse of process of law if the applicant is asked to face the trial. A perfect case is there to exercise the powers under Section 482 of the Code of Criminal Procedure. Hence, we proceed to pass the following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No.89 of 2024, pending before the learned Chief Judicial Magistrate, Nanded, arising out of the First Information Report vide Crime No. 193 of 2022, registered with Vajirabad Police Station, District-Nanded on 7th June 2022, for the offence punishable under Sections 409, 420, 467, 468, 471, 477 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant - Shahadeo S/o Rambhau Pokale.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG25