



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

CRIMINAL WRIT PETITION NO. 397 OF 2020

Jayant S/o Ganpatrao Kulkarni,
Age-49 years, Occu:Agril.,
R/o-Koshtagaon, Taluka-Renapur,
District-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32,
- 2) The Collector, Latur,
District-Latur,
- 3) The Chief Executive Officer,
Zilla Parishad, Latur.

...RESPONDENTS

...
Mr. Satish S. Manale Advocate for Petitioner.
Mr. G.A. Kulkarni, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.**

DATE OF RESERVING ORDER : 11th SEPTEMBER 2025

DATE OF PRONOUNCING ORDER : 16th OCTOBER 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :**1. Present Petition has been filed for following reliefs:-**

"A) Issue writ of mandamus or directions in the like nature to the respondents to file criminal complaint against the concerned Sarpanch and the Village Development Officers of Grampanchayat Koshtagaon, Tq-Renapur, Dist-Latur working from time to time for misappropriation, embezzlement and loss of the Grampanchayat funds as noted by the auditor in the audit reports carried out time to time.

B) Issue a writ of mandamus or directions in the like nature, directing the respondents No.2 and 3 to take steps and recover the amounts as recommended by the auditor in the audit reports of Grampanchayat Koshtagaon, Tq-Renapur, Dist-Latur carried out from time to time from the persons who are responsible for payment of those amounts."

2. The petitioner is resident of Koshtagaon Grampanchayat, Taluka-Renapur, District-Latur. He was the Ex-Sarpanch of the Grampanchayat from 1997 to 2002. Now he is a social worker and is interested in proper utilization of the Panchayat funds. He states that a fraud in *Jalyukta Shivar Yojana* for the year 2017-2018 implemented in the village, has been unearthed and the State Government has directed the Divisional Commissioner,

Aurangabad Division, to make an enquiry and submit the report. The audit of the Grampanchayat Koshtagaon for the financial year 2010-2011 to 2011-2012 was done and it was found that out of 27 discrepancies, 7 were related to actual misappropriation and unaccounted expenditure. Amount of Rs.16,81,002 was received to Panchayat Samiti. It was also then revealed that Sarpanch had shown that he has provided Rs.1,61,800/- as advance to the Grampanchayat and the said amount was later on repaid to him by the Grampanchayat. The same has been repeated in respect of one Dattu Lahane to the extent of Rs.1,39,402/-. It was also found that amount of Rs.9,35,603/- has been spent on various construction works under the Grampanchayat without calling tenders. The payments of the amount above Rs.500/- were made in cash than byway of cheque. Such deficiencies were found. Even the inquiry officer i.e. Assistant Block Development Officer Shri Rahul Gupta also found that there is misappropriation and irregularities in maintaining the accounts. Further in the audit for the year 2012 to 2016 it was found that there was further misappropriation of huge amount. The petitioner has quoted many instances and then states that as no action has been taken by the Chief

Executive Officer and/or the Collector to file criminal complaints, he is required to knock the doors of this Court.

3. Learned Advocate appearing for the petitioner submits that further audit reports were also called by this Court by various orders. By order dated 3rd March 2023, Chief Auditor, Local Funds was directed to conduct the inquiry and submit the report to the Court. The order that was passed, was the detailed order. Though it appears that audit has been conducted, yet it is not by the Chief Auditor, Local Funds and therefore, this Court by order dated 10th June 2025, asked the learned APP to get clarification. The clarification has been submitted by letter dated 20th June 2025, wherein it stated that for District level, the officer for audit is Deputy Chief Auditor Junior. When there is embezzlement of the public money, the authorities cannot shirk their responsibilities by not filing the First Information Report. Further, departmental inquiry though undertaken, that cannot be the answer as it would be against the directions of the Government in Government Resolution dated 4th January 2017.

4. Per contra, the learned APP strongly submitted that time and again the explanation appears to have been called by respondent No.3 and according to the affidavit-in-reply by

Deputy Chief Executive Officer, Zilla Parishad, Latur, Mr. Dattatraya Bhagwan Giri, there is no arbitrariness or irregularities or illegalities in taking steps against Sarpanch or Village Development Officers of village Koshtagaon. When some irregularities have been found, the inquiry committee has imposed penalty on the Gram Sevak. When the immediate superior authority is contending that there is no irregularity which can be stated to be of criminal nature, then action need not be taken.

5. As aforesaid, the main prayer of the petitioner is to give direction to the Chief Executive Officer to lodge the First Information Report (for short "the FIR"). Certainly, when the Petition has been filed, taking into consideration the pleadings, it can be said that the petitioner is having basic data in the form of audit reports with him. Now as regards the powers of this Court to give such directions, those are restricted. When it is stated that there is misappropriation by one authority, the other authority is coming with the case that there is no irregularity or illegality. The auditor has stated that there is misappropriation or some entries are not explained. However the Zilla Parishad authorities have taken departmental action and found that the wrong has been done in respect of maintaining the record but it

is stated that amount has not been misappropriated. Therefore, for us it is a disputed question of fact. If at all the petitioner wants to rely on auditors report, then he has the right to file the FIR. The FIR can be lodged by any person and if it is not taken by the police authorities, then he can adopt the procedure laid down in *Priyanka Srivastava vs. State of U.P.*, (2015) 6 SCC 287. We are also guided by the decision in *Sakiri Vasu Vs. State of U.P. and Others*, [(2008) 2 SCC 409], which is then again considered in *T.C. Thangaraj Vs. V. Engammal and Others*, [(2011) 12 SCC 328]. In *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others*, [(2016) 6 SCC 277] , after taking note of the decision in *Sakiri Vasu Vs. State of U.P. and Others* (supra), it has been observed that:-

"If the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions."

6. Thereafter, in *M. Subramaniam and Others Vs. S. Janaki and Others*, [(2020) 16 SCC 728], the Three Judge Bench of the Hon'ble Supreme Court, after relying upon all the above decisions, observed that the High Court cannot direct registration of the FIR in such circumstance. The direction which was given

by the High Court in this case to register the FIR was quashed and set aside. However, it was also made clear that it would be open to the informant-complainant to approach the Court of the Metropolitan Magistrate if deemed appropriate and necessary. We adopt the same recourse as adopted in ***M. Subramaniam and Others Vs. S. Janaki and Others***, (supra).

7. In view of the above observations, mainly taking into consideration the settled legal position in **Sakiri Vasu Vs. State of U.P. and Others** (supra), the Writ Petition stands disposed of, with liberty to the petitioner to approach the learned Magistrate under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita (Old Section 156(3) of the Code of Criminal Procedure. If such course is taken, the learned Magistrate to decide such application on its own merits.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE