IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 CRIMINAL APPLICATION NO.1264 OF 2024

Rushikesh Laxman Khatal,
Age 36 yrs., Occ. Service (Talathi),
R/o Mandavgan, Tq. Shrigonda,
Dist. Ahmednagar.

… **Applicant**

… **Versus** …

1 The State of Maharashtra
Through Police Station Officer,
Police Station, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

2 Mustaq Usman Inamdar,
Age 64 yrs., Occ. Agri.,
R/o Mandavgan, Tq. Shrigonda,
Dist. Ahmednagar.

3 Sayyed Razzak s/o Usman Inamdar,
Age 60 yrs., Occ. Agri.,
R/o Mandavgan, Tq. Shrigonda,
Dist. Ahmednagar.
Presently r/o Samarth Colony,
Near Namrata Hotel, Bholegaon Phata,
Ahmednagar.
(**Added as per order dated 20.12.2024.**)

… **Respondents**

…

Mr. D.S. Bhapkar, Advocate for applicant

Mr. A.M. Phule, APP for respondent No.1

Mr. Akram Inamdar, Advocate h/f Mr. S.S. Kazi, Advocate for respondent No.3

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CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.

DATE : 20th AUGUST, 2025

<u>ORDER</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 by original accused No.6 for quashing the proceedings in Regular Criminal Case No.828/2021 pending before learned Judicial Magistrate First Class, Shrigonda, Tq. Shrigonda, Dist. Ahmednagar arising out of First Information Report vide Crime No.11/2020 dated 04.01.2020 registered with Police Station, Shrigonda, for the offence punishable under Sections 199, 200, 420, 423, 467, 468, 471, 472 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. D.S. Bhapkar for applicant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. Akram Inamdar holding for learned Advocate Mr. S.S. Kazi for respondent No.3.

3 Learned Advocate for applicant has taken us through the entire charge sheet and submits that First Information Report came to be lodged on the basis of order passed below Exh.1 in Regular Criminal Case No.315/2019

on 17.12.2019 by learned Judicial Magistrate First Class, Shrigonda (Court No.1). Present applicant was serving as Talathi of village Mandavgan, Tq. Shrigonda at the relevant time. An application was made on 04.02.2019 by informant for taking the entry of legal representatives of one Usman Shahabuddin Inamdar, who was holding Devasthan Inam Class-III land bearing Gat No.593 and 559 at village Mandavgan. Copy of the said application has been received by the applicant and after receiving said application, being Talathi applicant has taken the entry. However, later on the other accused filed application for entering their names in view of the Will that was allegedly left by Usman Shahabuddin on 12.05.1991. When it was found by applicant that the same property has been claimed by two different groups or alleged legal heirs, he had forwarded the application to Tahsildar, as the applicant was not empowered to decide the said application. The applicant had taken utmost care to observe the procedure as contemplated under the Maharashtra Land Revenue Code. Under some mistaken fact it appears that informant was of the opinion that present applicant conspired with original accused Nos.1 to 3 and got the documents falsely prepared. It would be an abuse of process of law if the applicant is asked to face the trial.

4 Per contra, learned APP representing respondent No.1 and

learned Advocate representing respondent No.3 strongly object the application and submit that now the entire investigation is over and charge sheet has also been filed. Necessary documents have been collected and, therefore, this is not a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5 Here, it is to be noted that First Information Report came to be lodged on the basis of complaint lodged by respondent No.2 before learned Judicial Magistrate First Class i.e. Regular Criminal Case No.315/2019 on 17.12.2019. By order dated 17.12.2019 learned Magistrate directed Police Station, Shrigonda to investigate the matter under Section 156(3) of the Code of Criminal Procedure. Perusal of said order, which is forming part of charge sheet especially paragraph No.2, would show that learned Magistrate was aware about the fact that present applicant is a Talathi i.e. a Government servant. We would like to consider the amendment made by State of Maharashtra to Section 156(3) of the Code of Criminal Procedure, which came into effect by Maharashtra Act 33 of 2016 w.e.f. 01.11.2016, which runs thus -

> "**Amendment of section 156.**— In section 156 of the Code of Criminal Procedure, 1973, (2 of 1974) in its application to the State of Maharashtra (Hereinafter referred to as "the said Code"), after sub-section (3), the following provisos shall be added, 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.".

Therefore, perusal of the provisos would make it clear that there was a bar imposed upon learned Magistrate to order an investigation under Section 156(3) of the Code of Criminal Procedure against a person who is or was a public servant in respect of 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. The second proviso then provides for the deeming provision that if the said application would have been made by such person to the sanctioning authority and a decision has not been taken within a period of 90 days, then it should be treated that the sanction has been accorded. Perusal of order passed by learned Magistrate on 17.12.2019 would show that he has not considered both the provisos as per the Maharashtra amendment to Section 156(3) of the Code of Criminal Procedure in respect of present applicant. In view of the said order dated 17.12.2019 then First Information Report vide Crime No.11/2020 came to be registered on 04.01.2020 against the present applicant also and the investigation appears to have been carried out. Therefore, the basis for the registration of First Information Report itself is illegal or based on an illegal order, which cannot be allowed to sustain.

6 Further, the perusal of entire charge sheet would further show that even after the investigation was over Investigating Officer has not annexed the sanction as required under Section 197 of the Code of Criminal Procedure in view of involvement of or addition of this applicant as an accused. Certainly, the cognizance of the offence has been taken by learned Magistrate on 20.12.2021 itself as it appears from the order on the charge sheet. The purpose of protection under Section 197 of the Code of Criminal Procedure to a Government officer is to protect such Government officers from false implications.

7 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."

7.1 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.”

7.2 Further, in **G.C. Manjunath and Others Vs. Seetaram** [2025 INSC 439], 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 the Code of Criminal Procedure 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."

7.3 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."

8 Thus, taking into consideration the fact that the basis of registration of offence itself was illegal and investigation ought not to have been carried out as against present applicant on the basis of illegal First Information Report; yet one more chance was available to Investigating Officer to obtain the sanction under Section 197 of the Code of Criminal Procedure, but that opportunity has also not been exhausted. The contents of complaint and First Information Report would show that vague allegation made against him is that those documents have been signed by applicant as witness. He was then referring to the Will. The said Will is on record. It does not say that present applicant has not signed it in the capacity as attesting witness. There was no document to support the allegations in paragraph No.4 of criminal complaint and First Information Report. Present

applicant was dealing with the matter in his official capacity and, therefore, he had the umbrella of protection under Section 197 of the Code of Criminal Procedure. For prosecuting him the sanction was mandatory. When cognizance has been taken by learned Magistrate in spite of the bar under Section 197 of the Code of Criminal Procedure, it would be an abuse of process of law if the applicant is asked to face the trial. Certainly, case is made out for exercising powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

i) Criminal Application stands allowed.

ii) The proceedings in Regular Criminal Case No.828/2021 pending before learned Judicial Magistrate First Class, Shrigonda, Tq. Shrigonda, Dist. Ahmednagar arising out of First Information Report vide Crime No.11/2020 dated 04.01.2020 registered with Police Station, Shrigonda, for the offence punishable under Sections 199, 200, 420, 423, 467, 468, 471, 472 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Rushikesh Laxman Khatal**.

(SUSHIL M. GHODESWAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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