



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 CRIMINAL APPLICATION NO.991 OF 2019

Babasaheb Kisanrao Suryawanshi,
Age 55 yrs., Occ. Service,
(Agricultural Extension Officer),
R/o Chakradharnagar, Ambika Chowk,
Beed, Tq. & Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Shirur (Kasar),
Tq. Shirur (K), Dist. Beed.
- 2 Rajendra Sudhakar Rao Morale,
Age 44 yrs., Occ. Service,
Assistant Block Development Officer,
Panchayat Samiti, Shirur (K),
Tq. Shirur (K), Dist. Beed.

... Respondents

...

Mr. A.L. Kanade, Advocate for applicant

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. V.M. Chate, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 15th JULY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the proceedings in Regular Criminal Case No.62/2016 pending before learned Judicial Magistrate First Class, Shirur (Kasar), Tq. Shirur (Kasar), Dist. Beed, arising out of First Information Report vide Crime No.141/2014 dated 16.11.2014 registered with Police Station, Shirur (Kasar), for the offence punishable under Section 420, 406, 409 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.L. Kanade for applicant, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. V.M. Chate for respondent No.2.

3 Learned Advocate appearing for applicant has taken us through the entire charge sheet including First Information Report and submits that applicant is serving as Agricultural Extension Officer. First Information Report by respondent No.2, who was Assistant Block Development Officer, Shirur (Kasar), Dist. Beed, contends that when the present applicant was having charge of Block Development Officer from 17.10.2013 to 14.07.2014, at that time, by taking disadvantage of his post, he has distributed amount of Rs.1,26,50,000/- under the scheme 'Nirmal Bharat Abhiyan' and he had not

followed the guidelines for distribution of grants for construction of personal WC unit to the beneficiaries. In fact, it was not considered the fact that proposals were received from Gramsevak of Warni and Gomalwada villages on 15.02.2014 for constructing personal toilets under the scheme of 'Clean India Mission'. After taking the Gramsabha and passing necessary resolutions and sanction, the villagers were distributed with funds. So, it is not the work of applicant alone. The report that was given, on which the First Information Report is based, was based on half inspection or inquiry. Without inspecting the record of concerned Grampanchayat and without even visiting the Grampanchayat the inquiry report appears to have been prepared. In fact, being the Block Development Officer the applicant was empowered to distribute the amount and there was also a joint implementation of the scheme Mahatma Gandhi National Rural Employees Guarantee (MNREGA) and Clean India Mission as per the Government Resolutions dated 06.12.2012, 27.08.2012 and other such resolutions. Therefore, under the different schemes the funds were available and could have been distributed. There is no record that has been produced to show that the said amount was utilized or taken by the applicant to his account or in any way he received the benefits. The statements of accounts of the Grampanchayat would show that the amount was transferred to the Grampanchayat account and then the distribution has been made. What has been seized is also the cheques having

signatures of the Block Development Officer and the Sarpanch. When there is online transfer of amount, there was no question of misappropriation.

4 He also relies on the decision of **G.C. Manjunath and others vs. Seetaram** [MANU/SC/0437/2025], wherein Hon'ble Supreme Court held that prior sanction is required for prosecuting a Government Officer/public servant. No such sanction has been obtained in the present case.

5 Learned APP representing respondent No.1 and learned Advocate for respondent No.2 strongly opposed the application. Learned APP relies on the decision in **Om Kumar Dhankar vs. State of Haryana and another** [(2012) 11 SCC 252], wherein it has been held that -

“Offence of cheating can by no stretch of imagination by its very nature be regarded as having been committed by public servant while acting or purporting to act in discharge of official duty and, therefore, sanction of competent authority not required.”

In this case statements of witnesses have been recorded and it is also submitted that how to distribute the funds is regulated by different Government Resolutions. Now, in the inquiry it has been transpired that for 80 beneficiaries amount of Rs.4,600/- per head i.e. to the extent of Rs.3,68,000/- was distributed. However, those beneficiaries have not even constructed the toilets. The completion certificate has not been collected and

that is in respect of village Gomalwada, where the Grampanchayat had received amount of Rs.15,59,400/-. In the village Warni the amount of Rs.27,50,800/- was distributed but it transpired that people have not constructed the toilets. Some persons say that they have neither received the amount by cash or by cheque and some say that though the amount was received in the account, they have not constructed the same, however, the bills have been submitted each time. Therefore, there is clear evidence for cheating as well as misappropriation. As the charge sheet has been filed, let there be trial.

6 Here, it is to be noted that First Information Report that was lodged was under Section 409 and 420 of the Indian Penal Code. It was the then Gramsevak and the Block Development Officer i.e. present applicant. The charge sheet that was filed was under Section 420, 406, 409 read with Section 34 of the Indian Penal Code. From the Government Resolutions and the other statements it can be seen that Block Development Officer cannot come directly in contact with the beneficiaries when identification of beneficiaries dealing with their applications and the ultimate distribution is there. The procedure appears to be that the beneficiaries who want funds under the said scheme i.e. eligible candidate should approach the Grampanchayat with necessary documents and form. The Gramsevak would

collect that application and would place it before the Grampanchayat. The Grampanchayat after passing resolution would approve the application and forward it to the Block Development Officer and after the scrutiny once again and on the basis of availability of funds the funds would be distributed to the account of Grampanchayat. Thereupon, periodically amount would be distributed. At some places some advance would be granted and then based upon the progress in the construction it appears that the amount would be distributed. Therefore, on the basis of documents available the material is not worth showing as to how the applicant has cheated the public. Now, if it is the contention of the prosecution that the cheating is in respect of public fund i.e. the Government amount and to the Government, then it would be part of the duty or part of it would be part of duty. So also for Section 406 and 409 there is nothing to show that the amount has been received by the applicant. No doubt, from the statements of the witnesses to state that actual work was not done, but then in that case even if we consider that, that much evidence is available, distribution of amount was part of the official duty. It is not in dispute that the applicant is a Government servant and, therefore, only Section 409 has been added. Therefore, in view of the decision in **G.C. Manjunath** (supra), wherein though the facts are different; yet how the protection and the safeguard that is given under Section 197 of the Code of Criminal Procedure to the public servant has been considered. We would like

to rely on the paragraph quoted from **Gurmeet Kaur vs. Devender Gupta** [MANU/SC/1329/2024], which reads thus -

“22. the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the Code of Criminal Procedure would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, *inter alia*, a public servant. There is no doubt that in the instant case the Appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under Sub-Section (1) of Section 197 are “is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction”. Therefore, for the purpose of application of Section 197, a *sine qua non* is that the public servant is accused of any offence which had been committed by him in “discharge of his official duty”. The said expression would clearly indicate that Section 197 of the Code of Criminal Procedure would not apply to a case if a public servant is accused of any offence which is *de hors* or not connected to the discharge of his or her official duty.”

Then it has been observed in **G.C. Manjunath** (supra) that -

“36. In light of the aforesaid judgments, the guiding principle governing the necessity of prior sanction stands well crystallised. 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 sanction is obviated. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Code of Criminal Procedure 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 the scope of authority or acted improperly while discharging his duty.”

7 Here, in this case, as aforesaid, to sanction the grants was the official duty of the present applicant and in order to prove the offence under Section 409 of the Indian Penal Code that sanction was necessary. Though in **Om Kumar Dhankar** (supra) it is held that for Section 420 of the Indian Penal Code the sanction is not required; yet, when it comes to Section 409 of the Indian Penal Code, the sanction is required and in absence of such sanction as contemplated under Section 197 of the Code of Criminal Procedure the learned Magistrate ought not to have taken cognizance of the matter. Here, the charge sheet has been filed in 2016, therefore, though the order of taking cognizance has not been placed on record; yet, it is hard to believe that such

cognizance would not have been taken by the learned Magistrate up till now after so many years. When the cognizance has been taken without adhering to the mandatory requirements under Section 197 of the Code of Criminal Procedure, it would be an abuse of process of law to ask the applicant to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.62/2016 pending before learned Judicial Magistrate First Class, Shirur (Kasar), Tq. Shirur (Kasar), Dist. Beed, arising out of First Information Report vide Crime No.141/2014 dated 16.11.2014 registered with Police Station, Shirur (Kasar), for the offence punishable under Section 420, 406, 409 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicant **Babasaheb Kisanrao Suryawanshi**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)