



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1373 OF 2024

Pandhari S/o Mahajan Pawale,
Age-59 years, Occu:Retired Government
Servant (Village Development Officer),
R/o-Flat No.7, BRJ Heights, Siddhivinayak
Nagar, Malegaon Road, Near Gajanan Mandir,
Nanded, Taluka and District-Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Inspector,
Mandvi Police Station, Kinwat,
Taluka-Kinwat, District-Nanded,
- 2) Prashant S/o Sadashivrao Chavan
(Complainant), Age-50 years,
Occu:Agriculturist (former Dy. Sarpanch),
R/o-Jarurtanda, Near Aai Temple,
Jarurtanda, Taluka-Kinwat,
District-Nanded.

...RESPONDENTS

...
Mr. Bipinchandra K. Patil Advocate for Applicant.
Mr. S.A. Gaikwad, A.P.P. for Respondent No.1-State.
...

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

DATE : 5th AUGUST, 2025

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

1. Present Application has been filed for quashing the proceedings in R.C.C. No. 12 of 2021 pending before the learned Judicial Magistrate First Class, Kinwat, Taluka-Kinwat, District-Nanded, arising out of the First Information Report (for short "the FIR") vide Crime No. 49 of 2016, registered with Mandvi Police Station, Taluka-Kinwat, District-Nanded, on 4th December 2016, for the offence punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Bipinchandra Patil for the applicant and learned APP Mr. Gaikwad for respondent No.1.

3. Learned Advocate for the applicant submits that the present applicant was appointed as Gramsevak by order dated 3rd December 1996. He was promoted as Village Development Officer in 2006, and in 2016 village Jarurtanda, Taluka-Kinwat, District-Nanded, was under the jurisdiction of the present applicant. The FIR has been lodged by the Deputy Sarpanch of the Grampanchayat, Jarurtanda, stating that he was elected as Deputy Sarpanch since 2012 and Sarpanch was one Latabai

Waman Ratod. From 2012 on-wards various amounts were received towards development of the village, to the Grampanchyat. However, according to him, the present applicant and the said Sarpanch, by making signatures on the cheques, withdrawn the amount, but out of the work worth Rs.18,26,959/-, work was completed to the extent of Rs.9,65,422/- only. Thereby, according to him, the misappropriation is to the tune of Rs.8,61,537/-. After the complaint was registered, the inquiry was held departmentally against the applicant and others. Final report was submitted on 20th October 2021 and the present applicant has been exonerated by the Inquiry Officer Mr. Rajendra Ahire, the Assistant Commissioner, Aurangabad Division, Aurangabad. Therefore, it would be unjust to ask the applicant to face the trial.

4. Per contra, the learned APP strongly opposed the Application and submitted that there are statements of the witnesses recorded, showing that those persons had not received the amounts though they were shown to be entitled and the amount was granted to them. In respect of construction work at different places, false documents and certificates appear to have

been annexed. Though in the departmental inquiry the applicant might have been exonerated, but independently the prosecution can prove that the documents were forged. Public money has been misused and therefore, it amounts to not only misappropriation but cheating to the Government.

5. Here, it can be seen that when the charge-sheet was filed at that time the inquiry report appears to have not been given by the Inquiry Officer. A full-fledged departmental inquiry appears to have been conducted against the applicant and others and in the final report the Inquiry Officer has exonerated the applicant. However, the grave fact that is going against the prosecution is that the investigating officer or the prosecution is coming with the case that the present applicant being the public servant, misappropriated the Government money and thereby allegations as against the applicant are that the prosecution intended to show that he has committed offence under Section 409, 420 of the Indian Penal Code. 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 such bills or forward it for sanction or withdrawal of that amount was part of the official duty of the applicant and therefore, the sanction was necessary.

6. Here, we would like to take note of the legal position that was carved out in ***Om Prakash Yadav Vs. Niranjana 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. Further, 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."

8. 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."

9. 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."

10. 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 way back in the year 2021. The trial Court would not have waited for taking cognizance for about four years 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, 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. 12 of 2021 pending before the learned Judicial Magistrate First Class, Kinwat, Taluka-Kinwat, District-Nanded, arising out of the First Information Report vide

Crime No. 49 of 2016, registered with Mandvi Police Station, Taluka-Kinwat, District-Nanded, on 4th December 2016, for the offence punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant - Pandhari S/o Mahajan Pawale.

(III) So far as the prayer to return back the amount of Rs.4,50,000/- deposited by the applicant is concerned, the Judicial Magistrate, First Class, Kinwat, District-Nanded, to take the decision.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG25