



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 993 OF 2024

1. Bhikkanrao T. Baviskar
Age : 60 years, Occ. : Retired Chief Officer,
R/o. : at present 25, Ushhakal, Drupdinagar,
near Bendale Stop, Gat No.37/1,
Jalgaon, Tq. & Dist. Jalgaon
- ... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through Public Prosecutor,
High Court at Aurangabad
2. Ravindra Sitaram Khanderao
Age : 49 years, Occ. : Service,
R/o. : Nandurbar, Tq. & Dist. Nandurbar
- ... **RESPONDENTS**

...

Mr. Girish V. Wani h/f. Mr. Mangesh G. Patil – Advocate for Petitioner
Mr. V.M. Chate – APP for Respondent No.1, State
Mr. Suraj P. Tiwari – Advocate for Respondent No.2

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 13.11.2025

J U D G M E N T :

1. The petitioner has assailed the order rendered by the Sessions Judge, Nandurbar, Dist. Nandurbar in Criminal Revision Application No.5/2023, dismissing the revision, endorsing the order of the Judicial Magistrate First Class, Nandurbar, issuing process for the offence punishable under Section 173 of the Indian Penal Code (*"I.P.C." for short*).

2. The complaint was presented by the bailiff of the Court of Civil Judge Senior Division, Nandurbar, who visited the office of the present petitioner for the purpose of serving summons and the orders of *status-quo* passed in the civil suits pending before the concerned Court. The bailiff approached the petitioner, the Chief Officer of Municipal Council, Nandurbar, for effecting service of the order of *status-quo* in an urgent matter, since the order of injunction restrained them from demolishing the premises of the plaintiffs in the said suits.

3. The complainant has stated that the petitioner refused to accept the service of suit summons. Apart from refusing to accept the summons, the petitioner also obstructed the bailiff from affixing the summons on the conspicuous part of the premises as contemplated under Order V Rule 27 of the Code of Civil Procedure (*"C.P.C." for short*). This obstruction led to filing of the complaint for commission of the offence under Section 173 of I.P.C.

4. The Judicial Magistrate First Class, Nandurbar, considering the conduct of the petitioner and observing that such conduct does not form part of official duties issued process against the petitioner and registered the matter as a Summary Criminal Case. Accordingly, the summons were served upon the petitioner. The petitioner presented an application in order to enforce the protection under Section 197 of the Code of Criminal Procedure (*"Cr.P.C." for short*) and challenged the same on the ground

that initiation of proceedings without prior sanction required under Section 197 of the Cr.PC.

5. The Judicial Magistrate First Class rejected the application below Exh.44 holding that obstructing the bailiff from effecting service of summons or affixing the same cannot be regarded as an act done in discharge of official duties. Aggrieved thereof, the petitioner presented Criminal Revision Application No.16/2022, which was allowed with directions to decide the matter afresh.

6. Upon fresh consideration of application the Judicial Magistrate First Class again held that the conduct of the petitioner in obstructing service of summons does not form part of discharge of official duties and, therefore, rejected the application. As such, the petitioner presented Criminal Revision Application No.5/2023 challenging the said order on the ground that the protection available under Section 197 of the Cr.PC. had been ignored.

7. The Sessions Judge, Nandurbar, considering the invidious conduct of the petitioner in obstructing the bailiff, who had visited the office so as to serve Court orders, dismissed the revision application. Therefore, the petitioner has approached this Court under Article 227 of the Constitution of India.

8. Learned Counsel for the petitioner, Mr. Wani, vehemently

submitted that the petitioner, being the Chief Officer of the Municipal Council, acted in the discharge of the official duties. It is submitted that if the complainant intended to serve the summons, the same ought to have been served at the inward section of the office of the Chief Officer rather than personal service on the petitioner. At the time of service of summons, the petitioner was acting in the capacity of Chief Officer of Municipal Council the protection under Section 197 of the Cr.P.C. ought to have been conferred. Therefore, prayed to allow the application.

9. *Per contra*, learned Counsel for respondent No.2 – Mr. Suraj Tiwari and learned A.P.P. for respondent No.1 – State, supported the orders under challenge.

10. Learned Counsel for respondent No.2 submitted that the act of the petitioner cannot be regarded as a part of discharge of official duties. The complainant was attempting to serve the summons and the orders of *status-quo*, which warranted urgent compliance. It is submitted that the attempts were made on two successive occasions, however the petitioner acting with impunity, obstructed the bailiff from effecting service and also prevented from affixing the summons. This obstruction clearly constitutes an offence under Section 173 of the I.P.C.

11. Learned Counsel for respondent No.2 in support of submission has placed reliance on the following judgments :

- (i) Hon'ble Supreme Court in **Choudhury Parveen Sultana Vs. State of West Bengal and Anr.**, 2009 AIR (SC) 1404
- (ii) Hon'ble Supreme Court in **Bhagwan Prasad Srivastava Vs. N.P. Mishra**, 1970 AIR (SC) 1661

12. I have heard learned Counsel for the litigating and perused the record.

13. Admittedly, the civil proceedings were instituted by the residents in view of the demolition drive undertaken by the Municipal Council. The Civil Court passed an order of *status-quo* restraining the Municipal Council from demolishing the properties of the plaintiffs in the suit. To ensure compliance with the said order, the complainant/bailiff visited the office of the Municipal Council for service of summons and order of *status-quo*.

14. In my considered view, it was incumbent upon the petitioner to accept the order of the Civil Court. Instead the petitioner refused to accept the summons and further obstructed the bailiff from affixing the summons as contemplated under Order V Rule 27 of the C.P.C. This conduct clearly constitutes an offence punishable under Section 173 of the I.P.C.

15. As regards to the submission that the petitioner is entitled to statutory protection under Section 197 of the Cr.P.C., the same is devoid

of merit and does not warrant consideration. Since, the act of obstructing a Court bailiff from effecting service cannot be regarded as an act done in the discharge of official duties. Rather, it is *dehors* of such duties.

16. The petitioner has certainly misused the authority which was otherwise not vested, while preventing the bailiff from carrying out lawful duty. The protection under Section 197 of the Cr.P.C. is available only when the act complained of is reasonably connected with the discharge of official duties and not when the public servant exceeds authority or commits overreach.

17. Reliance placed by respondent No.2 on the judgments Choudhury Parveen (*supra*) and Bhagwan (*supra*), makes it explicit that the statutory protection under Section 197 of the Cr.P.C. is available only when the public servants act its integrally connected with discharge of duties and not when it is done *dehors* the duties.

18. Every individual owes an obligation that the orders of Courts must be respected and complied with, regardless of the position one enjoys. The petitioner, being a responsible public officer of the rank of Chief Officer was under an obligation to honour the orders of the Civil Court. However, in breach and contravention of this obligation, the petitioner not only refused to accept the summons and the orders of *status-quo* but also obstructed the bailiff from affixing the same. Such conduct is

unbecoming of a public officer is really inexplicable and unjustified constituting the commission of an offence under Section 173 of the I.P.C.

19. In view of the aforesaid aspects, no error can be noted in the order of the Judicial Magistrate First Class while issuing process for the offence punishable under Section 173 of the I.P.C., nor in the order of the Sessions Judge, Nadurbar, dismissing the revision. No case is made out warranting interference in the orders passed by the Courts below.

20. Resultantly, the Writ Petition sans merits and the same is accordingly, dismissed.

[SACHIN S. DESHMUKH]
JUDGE

Pooja Kale/