



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2389 OF 2024

Balwant Saybanna Jamadar,
Age : 57 Years, Occu. : Service,
R/o. Kasagi, Tq. Omerga,
Dist. Osmanabad.
At present R/o. Pawdewadi Naka,
Farande Nagar, Nanded,
Tq. & Dist. Nanded.

.... Applicant

VERSUS

1. The State of Maharashtra,
Through Officer In charge,
Police Station Parali (City),
Dist. Beed.
2. Police Inspector,
Maharashtra State Crime
Investigation Department, Beed,
Dist. Beed.
Mayadevi Tatyarao Danke,
Age : 50 Years, Occu. : Service,
R/o. Office of C.I.D. Beed,
Dist. Beed.
3. Laxmibai Sambhaji Jogdand,
Age : 74 Years, Occu. : Homemaker,
R/o. Nagapur Camp, Tq. Parali (V),
Dist. Beed.

.... Respondents

....
Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent Nos.1 and 2-State : Mr. N.R. Dayama
Advocate for Respondent No.3 : Mr. Uttam L. Telgaonkar and
Mr. Nitin U. Telgaonkar
....

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

Dated : 08th August 2025

PER COURT :-

1. The present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), for quashment of the First Information Report (for short, "FIR"), vide C.R. No.0340 of 2016, dated 29.09.2016, registered with Parali City Police Station, Dist. Beed, for the offences punishable under Sections 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120(B) read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC"), Section 147 of the Maharashtra Police Act, 1951 and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Atrocities Act") and for quashment of the supplementary charge-sheet filed against the applicant in the said crime, for the offences punishable under Sections 166, 167, 193, 217, 218 of IPC.

2. Heard learned Advocate for the applicant and learned Advocate for respondent No.3 as well as learned APP for respondent Nos.1 and 2-State .

3. Learned Advocate for the applicant submits that an FIR came to be lodged vide C.R. No.0340 of 2016 on 29.09.2016, with Parali City Police Station, Dist. Beed. At that time, it was for the offences punishable under Sections 306, 330, 331, 348, 323 read with Section 34 of IPC. A charge-sheet in the said matter came to be filed on 05.01.2021 and at that time, it was not under the provisions of the Atrocities Act and therefore, it was registered as R.C.C. No.04 of 2021, before the learned Judicial Magistrate First Class, Parali Vajinath, Parli, Beed. *De facto* complainant i.e. mother of deceased Tukaram Sambhaji Jogdand, approached this Court by filing Criminal Writ Petition No.431 of 2022 (Laxmibai W/o. Sambhaji Jogdand and Others Vs. The State of Maharashtra and Others) and by order dated 10th March 2023, it was concluded that an offence under Section 302 of IPC should be added and appropriate steps to be taken by resorting to Section 173(8) of Cr.P.C. Therefore, further investigation has been done and the supplementary charge-sheet has been filed on 10.07.2023, for the offences punishable under Sections 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120(B) read with Section 34 of IPC, Section 147 of the Maharashtra Police Act, 1951 and Section 3(2)(va) of the Atrocities Act.

4. Learned Advocate for the applicant further submits that cognizance has been taken by the learned Special Judge under the Atrocities Act on 10.07.2023. It is submitted that when the original charge-sheet was filed, at that time, the present applicant was not shown as an accused and his name is appearing at Sr. No.39 in the witness list. His statement has been recorded under Section 161 of Cr.P.C. The death in the matter of one Tukaram Sambhaji Jogdand, has been taken as the custodial death as it has occurred in the police station. When the earlier charge-sheet i.e. the main charge-sheet was filed, the Government had accorded sanction to prosecute those five accused persons by order dated 22.12.2020. However, when the present applicant was made as an accused in the supplementary charge-sheet, sanction had not been obtained to prosecute him. The allegations against the present applicant are that, it was his duty to visit the lock-up and check the lock-up guard as well as check the accused. However, he has not done his duty. He had intentionally not taken any entry in the register and he gave false information that when he had checked the lock-up, neither the accused nor the guard was present; thereby he misled the investigation. If it was the part of his duty to check the lock-up and take the entries, then for prosecuting him for not performing the said act, a sanction under Section 197 of Cr.P.C. was necessary.

5. Learned Advocate for the applicant relies on the decision of the Hon'ble Supreme Court in ***P.K. Choudhury Vs. Commander, [AIR 2008 SC 1937]***, wherein it has been observed that when the appellant was admittedly a public servant and he is said to have misused his position as a public servant, then as per the requirements of Section 197 of Cr.P.C., there should be a sanction to prosecute him, from the competent authority, as the offences under Sections 166 and 167 of IPC have a direct nexus with commission of a criminal misconduct on the part of a public servant, indisputably an order of sanction was pre-requisite.

6. Learned Advocate for the applicant further places reliance on the judgment of the Division Bench of this Court, Bench at Nagpur in ***Shriniwas Reddy Kankanala Vs. State of Maharashtra and Another, [2024(4) Mh.L.J. (Cri.) 510]***, wherein reliance has been placed on the decision of a Three Judge Bench of the Hon'ble Apex Court in ***B. Shaha and Others Vs. M/s Kochar, [(1979) 4 SCC 177]*** and it was held that undisputedly, the applicant is a public servant and at the relevant time, was discharging his official duty. Admittedly, cognizance has been taken and charge-sheet has been filed without obtaining sanction, whilst according to the State the proposal is

pending. In the circumstances, the prosecution without sanction is not approvable in the law.

7. Learned Advocate for the applicant further places reliance on the judgment of the Hon'ble Supreme Court in *G.C. Manjunath and Others Vs. Seetaram, [2025 0 SC 582]*, wherein it has been observed that any action undertaken by a public officer, even if in excess of authority vested in them or overstepping confines of their official duty, would nonetheless attract statutory protection, provided there exists a reasonable nexus between act complained of and officer's official functions. Absence of necessary sanction vitiates very initiation of criminal proceedings against accused persons.

8. Learned APP strongly opposes the application and submits that though the applicant was cited as a witness when the first charge-sheet was filed, yet it was, thereafter, transpired that he has made that statement intentionally to misguide the investigation. He was duty bound to tell the truth and in spite of having the accused in the lock-up, yet he has made the negative statement. Learned APP relies on the written instructions to him by Police Inspector, Crime Investigation Department, Latur, wherein reliance has been placed on the judgment of the Hon'ble Supreme Court in *Om Prakash Yadav Vs.*

Niranjan Kumar Upadhyay and Others, [2024 SCC Online SC 3726],

wherein also, account of the earlier decisions were taken and the Investigating Officer is of the opinion that there is absolutely no necessity to obtain sanction.

9. Learned Advocate appearing for respondent No.3, who is the mother of deceased Tukaram Jogdand, takes us through the background of the case and submits that deceased Tukaram came to be taken into custody around 19.30 Hrs. on 15.08.2014 and was kept in the lock-up till 16.00 Hrs. on 16.08.2014. It was the illegal detention. He was tortured. He ultimately hung himself. Initially, only five persons came to be added as accused. Of course, it was not a simple battle for respondent No.3, because her FIR was not taken immediately. Thereafter, when the FIR was lodged, it was by Police Inspector Smt. Danke, attached to Crime Investigation Department, Beed. Section 306 of IPC was invoked and therefore, respondent No.3 was required to approach this Court by filing Criminal Writ Petition No.431 of 2022. It was taken as custodial death in view of the final concluding remarks in respect of the post mortem report and therefore, steps were directed to be taken by the Investigating Officer by resorting to Section 173(8) of Cr.P.C.

10. Learned Advocate for respondent No.3 further submits that the present applicant was specifically assigned with the duty to check the lock-up and the accused persons. He has given false statement and misled the investigation. For the mistakes or lacunas left by the Investigating Officer, respondent No.3 should not suffer. It can certainly be said that it was an inhuman act done to deceased Tukaram Jogdand, by illegally detaining him and levelling false allegations against him. Now, let the point be decided by the trial court as to whether the sanction was necessary or not. This case should not be considered for exercising of powers under Section 482 of Cr.P.C.

11. Almost all the facts are taken note of by this Court and therefore, we would like not to repeat the same. However, only necessary facts are being taken. In the supplementary charge-sheet, the role of the present applicant has been separately given. It has been stated that the present applicant was serving as a Reader with Sub-Divisional Police Office, Ambejogai. He was having night duty in the intervening night of 15.08.2014 to 16.08.2014. He visited Parali City Police Station's lock-up at 01.29 Hrs. on 16.08.2014. But he had not checked the lock-up record nor made any inquiry with the accused, who was illegally detaining. It is stated that he gave false

statement that neither the accused nor the guard was present in the lock-up when he checked the lock-up. The prosecution has levelled specific sections against him i.e. Sections 166, 167, 193, 217, 218 of IPC.

12. Here, the observations from **P.K. Choudhury (Supra)** would come into play as regards the offences punishable under Sections 166 and 167 of IPC, as there was direct nexus with the commission of a criminal misconduct alleged on the part of the applicant, who is a public servant and therefore, it was pre-requisite to take sanction to prosecute the applicant.

13. The Investigating Officer cannot have a decision that sanction is not required for prosecuting the accused. The legal position that was carved out in **Om Prakash Yadav (Supra)** at the end appears to have not been seen by him. It has been held in para.74 of the judgment 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."

14. In **Sriniwas Reddy Kankanala (Supra)**, this Court has considered the Three Judge Bench decision in **B. Shaha and Others (Supra)**. 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."

15. Further, in **G.C. Manjunath and Others (Supra)** 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 para.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 cognisance 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."

16. 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."

17. We reiterate that the Investigating Officer ought not to have taken the call upon himself and the decision that the sanction is not required. If that logic is to be applied, then why he had obtained the sanction for the earlier five police officers, whose alleged roles are much graver than the role tried to be attributed to the present applicant. We would also like to clarify that in **Sriniwas Reddy Kankanala (Supra)**, it was submitted that the sanction proposal was forwarded prior to the filing of the charge-sheet and it was still pending and therefore, it appears that the liberty was then given to resubmit the charge-sheet against the applicant, in case of grant of sanction. We are not inclined to grant any such liberty in view of the fact that the Investigating Officer stated that no such move was made by him to the appropriate authority.

18. Since the law point has been raised and it appears that, without considering the point of sanction, cognizance has been taken by the learned Special Judge under the Atrocities Act on 10.07.2023, which was against the mandate and the statutory bar, it vitiates the proceedings itself to be undertaken against the applicant. We,

therefore, find this to be a fit case where we should exercise our powers under Section 482 of Cr.P.C. Hence, we proceed to pass the following order.

ORDER

- I) The application stands allowed.
- II) The First Information Report vide C.R. No.0340 of 2016, dated 29.09.2016, registered with Parali City Police Station, Dist. Beed, for the offences punishable under Sections 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120(B) read with Section 34 of the Indian Penal Code, 1860, Section 147 of the Maharashtra Police Act, 1951 and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set-aside as against the present applicant.
- III) The supplementary charge-sheet in C.R. No.0340 of 2016, dated 29.09.2016, registered with Parali City Police Station, Dist. Beed, filed against the present applicant, for the offences punishable under Sections 166, 167, 193, 217, 218 of the Indian Penal Code, 1860, stands quashed and set-aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE