



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2723 OF 2024

Vijay Vasant Harankar,
Age 43 yrs., Occ. Service,
R/o Tukaram Nagar,
Behind Swami Narayan Temple,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station, Chopda,
Dist. Jalgaon.
- 2 Prashant Vitthal Desai,
Age 49 yrs., Occ. Service,
R/o Plot No.40, Vidya Vihar Colony,
Amalner, Tq. Amalner,
Dist. Jalgaon.

... Respondents

...

Mr. M.D. Narwadkar, Advocate for applicant

Mrs. R.P. Gour, APP for respondent No.1

...

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

RESERVED ON : 26th FEBRUARY, 2025

PRONOUNCED ON : 08th APRIL, 2025

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

1 Present application has been filed for quashment of proceedings in Summary Criminal Case No.639/2022 pending before learned Judicial Magistrate First Class, Chopda, Dist. Jalgaon arising out of First Information Report vide Crime No.321/2021 dated 07.09.2021 registered with Police Station, Chopda, Dist. Jalgaon, for the offence punishable under Section 188 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. M.D. Narwadkar for applicant and learned APP Mrs. R.P. Gour for respondent No.1.

3 Learned Advocate appearing for applicant has taken us through the entire charge sheet including First Information Report. He submits that applicant is the Manager of ICICI Bank, Chopda Branch. He was posted in that branch from 2019 to 2020. One farmer by name Sarjerao Mula Patil had taken the benefit of Crop Insurance Scheme under the name 'Pradhanmantri Fasal Bima Yojana' (Abiya Bahar). The Agriculture Insurance Company had granted installment of the crop insurance, but it was not credited to Sarjerao Patil's account and, therefore, he made inquiry, but no information was given to him. He had therefore made a complaint with District Collector. District Collector had taken meeting for about 8 times to review the progress. At that

time, it was told that the name of said farmer was not matching to his Aadhar card, which he had given in the form. In fact, the said farmer had given the installments of the premium, which was deposited with ICICI Bank, Chopda Branch. Agriculture Insurance Company had given E-mail to the banks concerned to fill up the lacuna in the documents, but no steps were taken by the branch and, therefore, the said farmer could not receive the amount under the Crop Insurance Scheme. The Collector had given a dead line to Banks to comply with his order, but no steps were taken and, therefore, a Committee at the district level was constituted, which had fixed the responsibility of applicant and then for disobedience of the order passed by Collector the offence has been registered under Section 188 of the Indian Penal Code.

4 Learned Advocate for applicant submits that First Information Report has been lodged by one Prashant Vitthal Desai, who is Taluka Agriculture Officer and stated to be the Member Secretary of Grievance Redressal Committee, Chopda. The law requires that First Information Report should be filed by the officer concerned, whose orders have been allegedly disobeyed. Further, now, when the charge sheet came to be filed on 01.08.2022, it can be seen that the concerned Magistrate has taken cognizance of the offence without adhering to the provisions of Section 195

of the Code of Criminal Procedure. The Crop Insurance Scheme was voluntary in nature. Even if it can be understood that Collector was implementing authority or some way the authority connected to the said scheme; yet, he cannot be the authority who was empowered to pass any order or promulgate any order as per law, when the nature of the scheme was voluntary. The relationship between the Agriculture Insurance Company and the farmer was that of customer and provider. The bank was involved in between as a medium through whom the amounts were to be paid.

5 Learned Advocate for applicant relies on similar case decided by the co-equal Bench of this Court in **Chandrakant Nandkishor Sakhla vs. The State of Maharashtra and another** in Criminal Writ Petition No.1714 of 2022 decided on 22.08.2022, to which one of us (**SHRI. SANJAY A. DESHMUKH, J.**) was party and the petitioner therein was also the Manager from ICICI Bank and the order that was passed by the same authority i.e. District Collector, Jalgaon. This Court in the said matter after taking into consideration the note of Section 195 of the Code of Criminal Procedure and Three Judge Bench decision of Hon'ble Supreme Court in **Daulat Ram vs. State of Punjab** [AIR 1962 SC 1206] has observed that the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 of the Indian Penal Code when the charge sheet was filed under Section

173 of the Code of Criminal Procedure in view of Section 195 of the Code of Criminal Procedure. Therefore, it would be an abuse of process of law if applicant is directed to face the trial.

6 Per contra, learned APP strongly opposed the application and submitted that First Information Report has been lodged by an officer, who has been specifically directed by superior i.e. Collector, Jalgaon. The Crop Insurance Scheme was started in view of direction given by Hon'ble the Prime Minister of India with a specific purpose and to take care of damages or loss suffered by farmers. The Banks were involved so that smooth functioning and implementation of the scheme takes place. When in the present case a complaint was made by the farmer Sarjerao Mula Patil, inquiry was made. There was another farmer also who had not received the amount of crop insurance. The insurance company had not received the Aadhar card of farmers or there was some difference in their names. However, those persons had deposited the premium in the respective branches. Now, in spite of payment of premium they were deprived of getting the insurance money only because the Branch Manager has not responded to the queries or has not fulfilled the lacunas. The committee was formed when such incidences were reported from other parts of the district and general directions were given to all the banks to fill up lacuna and remove defects. But present applicant has

disobeyed said order given by District Collector. Hence, First Information Report was lodged. Learned APP relies on the decision in **Satya Narain Musadi and others vs. State of Bihar** [AIR 1980 SC 506]. Though this is a case under the Essential Commodities Act; yet, it was held that when the report is submitted by a public servant within the meaning of Section 21 of Penal Code, such a report would be a police report for the purposes of Section 191(1)(b) of the Code of Criminal Procedure and if the cognizance is taken by the Magistrate, then it should be taken as compliance under Section 11 of the Essential Commodities Act. On the similar line this should be considered as the specific compliance.

7 Here, we would like to say that the facts need not be gone into in respect as to whether who was responsible for not carrying out the order, but, here the first and the foremost fact to be noted is that when the offence is registered under Section 188 of the Indian Penal, then there has to be a compliance under Section 195 of the Code of Criminal Procedure. Section 195 of the Criminal Procedure raises a bar to take cognizance of the offence unless complaint in that regard is filed by the public servant or by a person who is administratively subordinate to such public servant. The coordinate Bench of this Court in **Chandrakant Sakhla** (supra) after taking note of **Daulat Ram's** case has observed that the Magistrate cannot take cognizance

of the offence punishable under Section 188 of the Indian Penal Code on police report filed under Section 173 of the Code of Criminal Procedure. In **Daulat Ram's** case (supra) after taking note of Section 195 of the Code of Criminal Procedure it was observed that -

“The words of Section 195 of the Criminal Procedure Code are explicit. The section reads as follows :

(1) No Court shall take cognizance -

(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tahsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of Section 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

..... What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the

complaint in writing of the public servant namely the Tahsildar in this case. The trial was thus without jurisdiction *ab inito* and the conviction cannot be maintained.”

7.1 Here, the word in the Section 195 of the Code of Criminal Procedure is ‘complaint’ and the word ‘complaint’ has been defined under Section 2 (d) of the Code of Criminal Procedure. Now, in the present case what has been filed is First Information Report as defined in Section 154 of the Code of Criminal Procedure, which cannot be considered as ‘complaint’. In **Ganesha vs. Sharnappa and another** [AIR 2014 SC 1198] Hon’ble Supreme Court has clarified the difference between Section 2(d) and 154 of the Code of Criminal Procedure. It is observed that –

“Complainant and informant are not words of literature and cannot be used interchangeably. In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, *inter alia*, provides for giving a copy of the information to the ‘informant’ and not to the ‘complainant’. However, the complainant is the person who lodges the complaint. The word ‘complaint’ is defined under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from 200 of the Code, which provides for examination of the complainant in a complaint case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information,

which leads to lodging of the report under Section 154 of the Code is the informant and the person who files the complaint is the complainant.”

Therefore, we agree to the observations in paragraph No.12 in **Chandrakant Sakhla** (supra).

8 Another point that is involved in this case is, whether the decision taken in the committee of which the District Magistrate was Chairperson and the subsequent action of granting time to fill up the lacuna holding the present applicant responsible and the order dated 26.04.2021 against 14 banks issued by District Collector, Jalgaon can be said to be “an order promulgated by a public servant lawfully empowered to promulgate such order”. Mere disobedience of an order by public servant is not sufficient to constitute an offence under Section 188 of the Indian Penal Code. It has to be proved by the prosecution that such order was passed by a public servant lawfully empowered to promulgate. In the First Information Report itself it is stated that joining the scheme i.e. Crop Insurance Scheme was voluntary for the farmers. When the Government had introduced the scheme it might have given the responsibilities for the better implementation of the scheme to its officers, but when the participation in the scheme itself is voluntary, then whatever steps and the procedure is undertaken for the implementation of the scheme cannot make such public servant lawfully empowered to

promulgate an order. We will have to understand the word “promulgate” used in Section 188 of the Indian Penal Code. In common parlance, the said word means “an order which is made known to public by publishing or proclaiming”. Promulgation necessarily implies public declaration as against any private information or order. There is no document on record to show that the order which was passed by Collector, Jalgaon, which is stated to have been disobeyed, was made public or declared or published in public. Further, ingredient that will have to be proved is that such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed or to cause danger to human life, health or safety or causes to tends to cause riot or affray. Another ingredient that is required to be even *prima facie* shown by the prosecution is that such order was passed against a person and thereby he was directed to abstain from a certain act or to take certain order with certain property in his possession or under his management. Therefore, this section applies to the order duly promulgated by public servant for public purposes and not to an order made to serve private persons. Here, no such act was expected from applicant. Therefore, we at the cost of repetition would like to observe that mere disobedience of an order will not constitute an offence under this Section, but the other ingredients are also required to be proved or even *prima facie* shown.

9 For the aforesaid reasons, we are of the opinion that the basic ingredients of the offence were not made out even *prima facie* and in spite of bar under Section 195 of the Code of Criminal Procedure when the learned Magistrate has taken the cognizance of the offence, it would be sheer abuse of process of law if the applicant is directed to face the trial. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Summary Criminal Case No.639/2022 pending before learned Judicial Magistrate First Class, Chopda, Dist. Jalgaon, arising out of First Information Report vide Crime No.321/2021 dated 07.09.2021 registered with Police Station, Chopda, Dist. Jalgaon, for the offence punishable under Section 188 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Vijay Vasant Harankar**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)