



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO.1217 OF 2024

Harjit Singh s/o Tirath Singh Sawhney
Age: 63 years, Occu.: Business,
R/o. Near Tara Pan Center,
Osmanpura, Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Mill Corner, Aurangabad.

.. Respondents

...
Petitioner - Party In Person.

Mrs. P. R. Bharaswadkar, APP for Respondent Nos.1 and 2/State.
...

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

DATE : 25 FEBRUARY 2025

ORDER :

. Present petition has been filed for following relief :-

“B. By way of issuing the appropriate directions, writ or orders in the like nature, the respondent authorities may kindly be directed to decide the representations of the petitioner dated 03.11.2022 and 28.12.2023 and it may kindly be ordered that, the sanction under Section 196 of

Cr.P.C. may kindly be given in connection with Crime No.I-03/2011 registered with Jinsi Police Station, Aurangabad, to prosecute the Head Constable Mr. A. K. Ware B.No.888, who was discharging his duties with Jinsi Police Station Aurangabad under Section 379 of I.P.C., which is pending before the learned Judicial Magistrate, F.C. Aurangabad bearing R.C.C. No.2039 of 2015.”

2. We have heard petitioner-in-person as well as learned APP for the respondents/State.

3. It is to be noted that when the present petition was filed in June 2024, it appears that decision regarding the representation/application by the petitioner dated 03.11.2022 and 28.12.2022 were still pending with the respondent. However, as and when the matter proceeded, learned APP ultimately pointed out that when an application was made by the party-in-person on 23.12.2022, that was decided on 20/23.10.2023 and the sanction to prosecute then Police Head Constable Arjun Pundlikrao Ware was rejected by Assistant Commissioner of Police (Administration), Chhatrapati Sambhajinagar, then when the matter was on board on 04.02.2025, the party-in-person pointed out the letter dated 02.09.2024 issued by Senior Police Inspector, Jinsi Police Station, Chhatrapati Sambhajinagar and

therefore, by our order dated 04.02.2025, we had directed the concerned police officer to remain present and the reply to be filed on behalf of State. On behalf of respondent No.2, affidavit-in-reply has been filed by Mr. Dnyaneshwar Jagannathrao Shinde, working as Police Sub Inspector, Jinsi Police Station, Chhatrapati Sambhajnagar stating that inadvertently the order that was passed on 20/23.10.2023 by Assistant Commissioner of Police (Administration) was not communicated to the petitioner-in-person and, therefore, by said letter dated 02.09.2024, the petitioner was asked to remain present and then his statement was recorded on 03.09.2024. Party-in-person appears to have received the copy under protest on 06.09.2024.

4. When the matter was on board yesterday, the concerned police officer i.e. Mr. Dnyaneshwar Jagannathrao Shinde, Police Sub Inspector, Jinsi Police Station, was present. Today also, he is present. He has tendered unconditional apology that though the letter/decision by Assistant Commissioner of Police, Chhatrapati Sambhajnagar was received by his police station, it was not given to the petitioner-in-person till 06.09.2024. Taking into consideration the said letter, we had called the file from Assistant Commissioner of Police (Administration) office and we have gone

through the same. It appears that the petitioner's letter dated 23.12.2022 was considered. The opinion from the law officer appears to have been called. One of the noting dated 05.06.2023 at paragraph No.14 states that "विधी अधिकारी चर्चा करा". Then noting dated 27.09.2023 says that "चर्चा करण्यात आली. अर्ज फाईल करावा". Two to three persons appears to have been involved in the matter and, their designations are not known, as they are not written on the note sheet. The first and the foremost objection we take in respect of the procedure that is adopted is that when it comes to sanction, the concerned authority would be a quasi judicial authority and he cannot involve so many persons in the process. At the most, he can consult law officer and get the facts from the concerned police station. Here, in paragraph No.7, which starts with 'ACP (Admin)' a note has been stated that since Police Head Constable Ware has done his official duty, it will not be appropriate to grant sanction under Section 197 of the Code of Criminal Procedure. Below the said noting, there is date 30/09 and appears to be of the year 2023, but it is not so written. Then immediately below that it is said received on 31.03.2023. If the application which was under consideration was dated 23.12.2022 (as per the order dated 20/23.10.2023), then the noting column

No.7 cannot be of 30.09.2023 and then received on 31.03.2023. It cannot be taken as 30.09.2022 also as the application itself that was stated to be considered dated 23.12.2022. Then noting dated 01.04.2023 states “विधी अधिकारी यांचा अभिप्राय घ्यावा” which was then given by the law officer on 12.04.2023. As aforesaid paragraph No.14 noting dated 27.09.2023 states that application appears to be filed by Deputy Commissioner of Police and then it has been ultimately stated by Assistant Commissioner of Police (Administration) परी-१४ मान्यता on 20.10.2023. This indicates that he has given nod to whatever has been decided by Deputy Commissioner of Police and not his own independent decision. If he is the sanctioning authority, then his order should reflect application of mind and, therefore, we do not consider the communication dated 20.10/23.10.2023 as a legal order and therefore, we set aside the said order.

5. We remand the matter back to the concerned authority, who was the appointing and removing authority for Police Head Constable – Ware, for fresh consideration.

6. We direct the concerned authority to decide the representations/applications given by the party-in-person for

according sanction within a period of four weeks from today.

7. We expect that the concerned authority would give reasons while coming at a particular conclusion.

8. The writ petition stands disposed of accordingly.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm