



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3115 OF 2024

Harikalyan S/o Janardhan Yelgatte,
Age-44 years, Occu:Service,
R/o-Reedy Colony, Shirur Tajband,
Taluka-Ahmedpur, District-Latur,
At present-Flat No.904, E-3 Building,
Harikalyan Society, Vishrant Wadi,
Pune.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through: Anandnagar Police Station,
Dharashiv (Osmanabad),
- 2) Sunil S/o Baburao Kamble,
Age-69 years, Occu:Service-
Sanitary Inspector,
R/o-Municipal Quarters, Tambri (Div),
Dharashiv, Taluka and District-
Dharashiv (Osmanabad).

...RESPONDENTS

...
Mr. Ameya N. Sabnis Advocate for Applicant.
Mr. A.D. Wange, A.P.P. for Respondent No.1.
Mr. Vivekanand Deshmukh Advocate for Respondent No.2.
...

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

DATE : 3rd JULY, 2025

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

1. Present Application has been filed for quashing the proceedings in R.C.C. No. 240 of 2023 pending before the learned 2nd Judicial Magistrate First Class, Osmanabad, arising out of the First Information Report (for short "the FIR") vide Crime No. 231 of 2022 registered with Anandnagar Police Station, Osmanabad on 6th August 2022, for the offence punishable under Sections 379 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Sabnis for the applicant, learned APP Mr. Wange for respondent No.1 and learned Advocate Mr. Deshmukh for respondent No.2.

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet including the FIR. He submits that the applicant was serving as Chief Executive Officer in Municipal Council, Osmanabad between 7th July 2020 to 22nd November 2022. In fact he had noticed the theft of scrap material which was stored in the premises of Municipal Council. The fact was noticed between 23rd July 2022 and 24th July 2022. Therefore, the applicant had authorized Sanitary Inspector Mr.

Sunil Baburao Kamble to lodge the FIR on 4th August 2022. The stolen scrap was worth Rs.13,000/-. Accordingly, the said FIR vide Crime No.231 of 2023, was lodged against unknown persons. Further, being the Chief Executive Officer of the Municipal Council and within his powers applicant made preliminary inquiry and found that employee of the Municipal Council Mr. Vilas Gore and one contractor were behind the said theft. The applicant has constituted the six members committee to conduct the inquiry and asked them to verify the C.C.T.V. footage and assess the quantity and cost of the stolen material. Inquiry report was submitted on 5th August 2022, holding Vilas Gore from the Sanitary Department, responsible for the theft. It was found that the record in respect of seized material was not maintained in the requisite register and therefore, the assessment of the cost of the stolen material could not be ascertained. Administrative action was taken against said Vilas Gore. Now, during the investigation, the investigating officer has verified the C.C.T.V. footage and recorded the statements of eye witnesses, in which they have stated that Vilas Gore has committed theft of scrap material with the help of one Anand Hajgude and supervisor Bablu. Unfortunately, it appears that the issue in respect of news of theft of scrap material was raised in

the Legislative Assembly of Maharashtra and then the applicant was transferred from Osmanabad Municipal Council, on 22nd November 2022. In order to get rid of the said Legislative Assembly Question, the Collector, Osmanabad has issued letter to the then Chief Executive Officer, Municipal Council, Osmanabad to lodge the offence against the guilty persons. It appears that accordingly the letter was issued to the investigating officer and that is how the applicant came to be arrayed as co-accused. In order to harass the applicant, he has been arrayed in four offences, i.e., dated 5th March 2023, 16th March 2023, 19th March 2023 and 6th August 2022 (applicant came to be arrayed as accused in the last offence on 3rd March 2023).

4. Learned Advocate for the applicants submits that the allegations in the charge-sheet against the applicant are in the nature that – (i) Applicant has not maintained the stock register, (ii) Applicant has not submitted the inquiry report to the investigating officer and he has not co-operated with the investigation, and (iii) Applicant as per the inquiry report, has not taken action against the responsible person. None of these allegations satisfy the ingredients of Section 379 of the Indian

Penal Code. Further, it cannot be said that he has allegedly committed the offence, as there is no evidence to that effect. Under such circumstance, it would be unjust to ask the applicant to face the trial.

5. Per contra, the learned APP for respondent No.1 and learned Advocate for respondent No.2 strongly opposed the application and submitted that since the charge-sheet has been filed and the public exchequer is involved in the matter i.e. the scrap material was belonging to the Municipal Council and if it would have been sold, then it would have generated amount to the Municipal Council i.e. for the public purposes and therefore, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure should be exercised.

6. We fully agree with the submissions on behalf of the applicant. In the FIR it is clearly stated that the informant was authorized by the present applicant, in the capacity as Chief Executive Officer, to lodge the report in respect of the theft of scrap material. The scrap appears to be there since last about three years. The said material was seized while implementing the removal of encroachment in the premises of Municipal Council area. But when the said material was found to be stolen,

the FIR has been lodged against unknown persons. Now, we are required to consider, what is the role attributed by the investigating agency as against the present applicant. If we see the charge-sheet, the allegations which have been made against the present applicant are administrative in nature. If he has not recorded as to which material was seized, in the requisite register or has not given the details as to how much loss it has caused to the Municipal Council, then such act/acts would only be taken care of administratively. There is absolutely no evidence collected by the investigating officer that there was any nexus or connection between the main accused and the present applicant. Before levelling the offence of theft against a higher rank officer like Chief Executive Officer of Municipal Council, the investigating officer ought to have considered that there is strong and positive evidence. It is only stated that in the investigation his participation is transpired. The eye witnesses have stated that Vilas Gore and Hajgude along with certain persons were found picking the scrap material and transporting it in Eicher Tempo. C.C.T.V. footage has been collected in respect of the same. The investigating officer states that he had contacted the applicant in respect of the investigation of the offence but he has not helped him. This cannot attract the

ingredients of Section 379 of the Indian Penal Code. There is also mention about the inquiry report by the inquiry committee which was appointed by the present applicant. Not taking any action against the staff member, who has not made the entry in the respective register in respect of the material, is again at the most an administrative lapse. It appears that under some pressure the investigating officer has implicated the applicant. Unfortunately, it appears that he was arrested and was sent in police custody also.

7. Another point that is required to be considered is that the investigating officer interestingly adds Section 34 of the Indian Penal Code, but there is no evidence to show the common intention between the main accused Vilas Gore and Ajay Suryawanshi with the present applicant. Therefore, taking into consideration the role that was attributed to the applicant that in his official capacity he has not done something or has not provided information, then in fact being the public servant the applicant was protected under Section 197 of the Code of Criminal Procedure. There is no sanction order that has been annexed with the charge-sheet which would allow the investigating officer to prosecute the present applicant. The letter by the Collector to take action against the erring officers,

cannot be considered as sanction to prosecute as contemplated under Section 197 of the Code of Criminal Procedure. On this count itself the entire proceedings deserve to be quashed and set aside as against the present applicant. It can be said that it cannot be a duty of a Government servant to commit theft even in his official capacity and therefore, sanction is not required. That proposition would have been accepted if there was any direct evidence against the present applicant. But taking into consideration the allegations in the entire charge-sheet, at the cost of repetition we would say that whatever has not been done by the applicant or what he ought to have done, was connected to discharging his duty as a public servant or purporting to be in discharge of his duty and therefore, the said sanction was must.

8. Taking into consideration the above observations, we take this to be a fit case where if the application is not allowed, then it would be an abuse of process of law to ask the applicant to face the trial. Hence the following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No. 240 of 2023,

pending before the learned 2nd Judicial Magistrate First Class, Osmanabad, arising out of the First Information Report vide Crime No. 231 of 2022 registered with Anandnagar Police Station, Osmanabad on 6th August 2022, for the offence punishable under Sections 379 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant - Harikalyan S/o Janardhan Yelgatte.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25