IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 CRIMINAL WRIT PETITION NO. 1212 OF 2023

SHAIKH MANJUR SHAIKH CHAND
….Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS
…..Respondents

Mr. Mahesh P. Kale, Advocate for the petitioner
Mrs. A. S. Deshmukh, APP for the respondents/State
Mr. Krushna S. Solanke, Advocate h/f Mr. S. J. Naik, Advocate for the respondent No.3

CORAM : KISHORE C. SANT, J.
DATE : 15th JULY, 2025

P. C.

1. Heard.

2. The petitioner has assailed the order passed by the learned Additional Sessions Judge, Majalgaon dated 22-02-2023 below Exh.1 in Criminal Revision Petition No.1/2023, dismissing revision. The revision was filed against an order of rejection of an application filed by the petitioner dated 16-01-2023 below Exh. 1 in Cri. Misc. Application No.108/2022 seeking direction

under section 156(3) of the CR. P. C.

3. The petitioner had approached the learned JMFC with a case that the respondent was working as a Clerk in Property Department in Municipal Council. He was assigned with the work of collection of property, tax, water cess and other taxes. While doing so, during January, 2018 to November, 2020. 217 mutation entries were taken in 1043 files which were in respect of registration of Gunthewari (regularization of the land). It is stated in the complaint that though the respondent collected the amount of tax, he did not deposit the same in the account of Municipal Council. He has given particulars of receipts books. With this, he filed a complaint and sought direction. The learned Magistrate rejected the application on the ground that no prior sanction is obtained by the petitioner in view of section 156(3) of the Cr. P. C. and in view of Maharashtra Amendment. The petitioner, approached the revisional court wherein his revision also came to be dismissed.

4. The learned advocate for the petitioner vehemently argued that doing illegal act is not a part of official duty. In the present case, the respondent has collected huge amount of taxes and still did not deposit the amount in the account of Municipal Council. This is clearly amount cheating and criminal breach of trust. Both the courts have failed to appreciate the case. He submits that a clear case is made out under sections 420, 409, 465, 467, 468, 469 and 471 of the Indian Penal Code. He submits that petition deserves to be allowed by quashing and setting aside the impugned order and by directing the learned JMFC to pass order under section 156(3). He relies upon the judgment in the case of *Mohd. Yousuf Vs Afaq Jahan*[1] *and Cri. Appeal No. 8/2009, Choudhari Parveen Sultana Vs State of West Bengal.*

5. The learned AGP supports the impugned order. She submits that in view of section 156(3) of the Maharashtra Amendment it is mandatory to obtain sanction under section 197 of the Cr. P. C., even while considering application under

1 2006(1)Crimes 81 SC

section 156(3). She submits that there is no illegality committed by the revisional court.

6. The learned advocate for respondent No.3 also vehemently opposed the petition. He submits that collection of taxes is purely part of official duty. The petitioner had made complaint even to the Chief Executive Officer of the Municipal Council and enquiry was held. On enquiry it is found that the respondent is not at fault. He adopts the argument of the learned APP. He further submits that in fact, the amount is recovered from the people and deposited in the account. The amount is well accounted form and no illegality is committed.

7. Having heard the parties, this court finds that the learned JMFC has rejected the application on the ground that no prior sanction was obtained before lodging the complaint. Section 156(3) of the Cr. P. C. reads as under:

> ***"156. Police Officer's power to investigate cognizable case.***
>
> *3] Any Magistrate empowered under section 190 may order such an investigation as above mentioned.*

Maharashtra State Amendment

In its application to the State of Maharashtra in sec. 156 after sub sec. 3 the following provisions shall be added namely:

"Provided that, no magistrate shall order an investigation under these section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of act done by such public servant while acting or purporting to act in the discharge of his official duties, except the previous sanction under section 197 of the Code of Criminal Procedure 1973 (2 of 1974) or under any law for the time being in force.

Provided further that the sanction authority shall take a decision within a period of 90 days from the date of receipt of proposal for sanction and in case the sanctioning authority fails to take decision within the stipulated period of 90 days, the sanction shall be deemed to have been accorded by the sanctioning authority."

8. The proviso of section 156(3) clearly provides that sanction is required even prior to passing an order under section 156(3) of the Cr. P. C. when it is shown that persons against whom allegation is made is a public servant and that the act alleged is committed during the course of his duty.

9. In the present case, the allegations show that respondent No. 3 was serving as a Clerk in Property Department.

He was assigned with the duty of collection of property tax, water cess etc. The allegations is that though he collected the amount of the taxes, he did not deposit the same in the account of Municipal Council. It is clear from very averments in the appliclation that the allegations is about calculation in duty which clearly shows that it was a part of official duty of the respondent. In such case, it was necessary to obtain sanction under section 197 of the Cr. P. C. The learned JMFC so also the learned Sessions Judge have rightly considered the legal position and considered the case of the *Anil Kumar Vs M. K. Ayyappa*[2].

10. Considering all above, this court does not find any reason to entertain the criminal writ petition. The criminal writ petition is devoid of merit and same is dismissed.

[KISHORE C. SANT, J.]

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2 2014 CRL. L. J.