



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

**CRIMINAL WRIT PETITION NO.1822 OF 2023**

Dnyaneshwar S/o Kacharu Thorat,  
Age-38 years, Occu:Assistant Police  
Inspector, R/o-Newasa,  
Taluka-Newasa, Dist-Ahmednagar.

**...PETITIONER**

**VERSUS**

1) The State of Maharashtra,  
For the Shrirampur Taluka  
Police Station, Shrirampur,  
Taluka-Shrirampur, Dist-Ahmednagar,

2) Suraj Rajkumar Yadav,  
Age-21 years, Occu:Milk Business,  
R/o-K.V. Road, Ward No.6,  
Shrirampur, Taluka-Shrirampur,  
Dist-Ahmednagar.

**...RESPONDENTS**

...  
Mr. Amol Gandhi Advocate with Mr. Punit S. Mehta  
Advocate for Petitioner.  
Mr. A.D. Wange, A.P.P. for Respondent No.1.  
Mr. A.D. Khot Advocate for Respondent No.2 (**Absent**).  
...

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

**DATE : 12<sup>th</sup> FEBRUARY, 2025**

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

1. Present Writ Petition has been filed for following relief:-

" (B) Writ petition be allowed with cost.  
The Judgment and Order dated 01/12/2023 in  
Criminal Revision Application No.33/2023 passed  
by the Additional Sessions Judge, Shrirampur may  
be quashed and set aside."

2. It will not be out of place to mention here that based on the said Judgment of the learned Additional Sessions Judge, Shrirampur, the First Information Report is still not lodged as initially it appears that there was stay by the learned Additional Sessions Judge to his own order as per order below Exhibit-19, passed on 6<sup>th</sup> December 2023.

3. The background is now required to be considered. A complaint application came to be filed by present respondent No.2 vide Criminal M.A. No. 195 of 2023 registered with Judicial Magistrate First Class, Shrirampur alleging that the non-applicants therein including present petitioner (original non-applicant No.3), have committed offence punishable under Sections 166, 166-A, 166-B, 204, 220, 330, 331, 339, 323, 506 read with Section 34 of the Indian Penal Code. All the non-applicants in the said application are the police officers and the present petitioner was then serving with Shrirampur Police

Station. In the compliant application, it was stated that the applicant therein (present respondent No.2) is also doing social work. He had received the phone call on 22<sup>nd</sup> February 2023 that marriage of a minor girl would be performed at Karegaon in Shrirampur and therefore, respondent No.2 had made inquiry and gave call to that effect to phone No.112 i.e. police help line number. The police officers from Shrirampur Taluka Police Station came to his house and respondent No.2 was forcibly taken in the police vehicle to the police station. He was abused and assaulted. Those police persons had also used bad words against the said girl and had not taken part in stopping her marriage. Even the friend of respondent No.2 was also detained and assaulted. It was then pretended that respondent No.2 was doing some illegal activities. Respondent No.2 was also assaulted in presence of Police Inspector Mr. Thorat, i.e. the present petitioner. Present petitioner had then directed that respondent No.2 should be involved in false offence. Present respondent No.2 and his friend were released around 9.00 p.m. At night time respondent No.2 started pains in stomach and therefore, he was admitted in Sakhar Kamgar Hospital. He was admitted there for about three days. When police had come to take his statement when he was admitted in the hospital, again

respondent No.2 was threatened and his First Information Report was not taken. He had, therefore, given a written complaint to the police station and when it was not taken, the copy was given to the District Superintendent of Police, Ahmednagar and the higher authorities. Respondent No.2 had then asked the CCTV footage from the police station but it was falsely contended that CCTV footage is not available. Respondent No.2 is having mobile recording of CCTV footage and is ready to produce the same. He, therefore, prayed in the said application, that the matter be sent for investigation under Section 156(3) of the Code of Criminal Procedure.

4. After hearing learned Advocate for respondent No.2, a reasoned order has been given by the learned Judicial Magistrate First Class, Court No.1, Shrirampur on 22<sup>nd</sup> June 2023 thereby rejecting the application filed by present respondent No.2, mainly on the ground that no previous sanction has been obtained under Section 197 of the Code of Criminal Procedure. Respondent No.2 had then approached the Sessions Court, Shrirampur, by filing Criminal Revision Application No.33 of 2023. The learned Additional Sessions Judge, Shrirampur, by Judgment and order dated 1<sup>st</sup> December 2023, has allowed the said Revision Application thereby setting aside the order passed

by the learned Judicial Magistrate First Class, Shrirampur in Criminal M.A. No.195 of 2023, directing the concerned police station to register the crime against non-applicant Nos. 1 to 3 therein and make investigation. This order is under challenge in this Revision.

5. Learned Advocate for the petitioner vehemently submits that the order passed by the learned Magistrate was perfectly correct taking into consideration the proviso added by way of amendment to Section 156(3) of the Code of Criminal Procedure. It provides that, no Magistrate shall order an investigation under this 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 the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under Section 197 of the Code of Criminal Procedure or under any law for the time being in force. As the sanction was not produced by respondent No.2, the learned Judicial Magistrate First Class refused to send case for investigation under Section 156(3) of the Code of Criminal Procedure. However, the learned Additional Sessions Judge has taken note of Section 197 of the Code of Criminal Procedure wherein there is a deeming provision for sanction which says

that the sanction was not necessary. The sanction is necessary when the act is reasonably within the discharge or in connection with the official duty. However, considering the acts which are alleged against the petitioner, it cannot be said that assault or directing a person to be implicated in false case can be the official duty. As the sanction was not necessary, the learned Magistrate has erred. However, the learned Additional Sessions Judge has failed to consider that even for an act purporting to be in discharge of the official duty, the sanction is necessary. The learned Additional Sessions Judge has not considered that Non Cognizable Offence No.104 of 2023 came to be registered against respondent No.2 and one another, for the offence under Section 177 of the Code of Criminal Procedure and it was registered on 22<sup>nd</sup> February 2023. This fact has not been considered at all by him as it was proved that the girl who was going to be married, was major and not minor and therefore, the information that was given by respondent No.2 was false. Further an inquiry was made by the Superintendent of Police regarding the incident and the copy of the report was submitted before the concerned Judge. From the said report, it was clear that the superior authority had not found any fault with the police authorities at Shrirampur Police Station. The aim and

object of Section 197 of the Code of Criminal Procedure was not considered in proper perspective. The protection that has been accorded to the petitioner has been unnecessarily taken away by the learned Additional Sessions Judge and therefore, when he has transgressed his jurisdiction under Section 397 of the Code of Criminal Procedure, the impugned order deserves to be quashed and set aside.

6. Per contra, the learned APP strongly opposed the Petition and submitted that a reasoned order has been given by the learned Additional Sessions Judge, Shrirampur relying upon certain decisions of various High Courts and therefore, the impugned order need not be set aside. Let the FIR be registered and then upon the result of the inquiry, it would be clear as to whether the sanction is necessary or not. Section 197 of the Code of Criminal Procedure deals with taking of cognizance and therefore, unless there will be a charge-sheet, the question of cognizance will not arise.

7. At the outset, it is to be noted that when a complaint application for sending the case for investigation under Section 156(3) of the Code of Criminal Procedure is filed involving the Government servants as accused persons, then the Magistrate is

duty bound to consider as to whether the applicant had approached the appropriate authority for according sanction or not. If the application filed by him before the competent authority granting sanction is not entertained within the stipulated period (90 days) then there is a deeming provision and it can be stated that from 91<sup>st</sup> day it should be treated that there is a deemed sanction to prosecute that Government servant. Unless this compliance is made, the order for investigation under Section 156(3) of the Code of Criminal Procedure cannot be passed at all. Now, if we consider the order that has been passed by the learned Magistrate, then the learned Magistrate had considered the facts of the case and had also considered the citations on which the learned Advocate for the applicant / present respondent No.2 had relied. It is clearly observed that the act done in the present case is while discharging the official duties of the accused who are public servants and therefore, sanction under Section 197 of the Code of Criminal Procedure is necessary.

8. Now, in Revision which was preferred under Section 397 of the Code of Criminal Procedure, the learned Additional Sessions Judge has taken each and every sections which were stated to be involved or given by the original complainant, present

respondent No.. There appears to be suppression of facts by the complainant which was not noted by the learned Additional Sessions Judge. Already there was an inquiry made by the police officer on the basis of complaint filed by present respondent No.2 on 28<sup>th</sup> February 2023. The report was submitted to the District Superintendent of Police, Ahmednagar on 30<sup>th</sup> May 2023. Statement of respondent No.2 was taken by the Sub-Divisional Police Officer. So also the statements of the present petitioner and other two proposed accused were taken. Clearly it was then stated by the police officers that after they received the phone call on Phone No.112, inquiry was made and it was transpired that one Onkar Shankar Salve was also involved. Said Onkar Salve had enmity with the father of the girl and therefore, he had made that complaint. The school record of the girl was considered and she was proved to have completed 18 years of age at the time of marriage and therefore, offence under Section 177 of the Cr.P.C. i.e. non-cognizable offence was registered against present respondent No.2 and said Onkar Salve.

9. Now when the said application i.e. Criminal M.A. No.195 of 2023 was given, it was alleged that the present petitioner has committed offence under Sections 166, 166-A, 166-B of the

Indian Penal Code which is in respect of public servant disobeying law with intent to cause injury to any person, public servant disobeying direction under law and punishment for non-treatment of victim. Out of that, Section 166-B is against in-charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, if contravenes the provisions of Section 357-C of the Cr.P.C., is made punishable. Here the accused persons are the police officers and not in-charge of hospital, therefore, no question of attracting Section 166-B of the Indian Penal Code would arise. Ingredients of Section 166-A of the Indian Penal Code are also not attracted taking into consideration the sub-sections (a), (b), (c) of the same. As regards Section 166 of the Indian Penal Code is concerned, indispensable ingredient of the offence under this Section is that the offender should have done the act 'being a public servant'. The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted himself as such public servant. This was so held in ***K.K. Patel vs. State of Gujarat, (2000) 6 SCC 195***. That means such disobedience is certainly while he would have been acting as a public servant or in his official duty.

10. Section 204 of the Indian Penal Code deals with destruction of document or electronic record to prevent its production as evidence. Now the case of respondent No.2 is that he had demanded the CCTV footage. But if we consider the reply that was given, that there are in all 12 cameras installed, however, they were not operational since 31<sup>st</sup> January 2023 and the hard disk was also damaged. Information regarding the same has been given to the Office of the District Superintendent of Police and the station diary entries to that effect are also taken. Thus, it can be said that non-availability is different from destruction and when since prior to the alleged date of incident the fact was informed to the Office of the District Superintendent of Police, the offence cannot be said to have been made out under this Section.

11. Section 220 of the Indian Penal Code deals with commitment for trial or confinement by person having authority who knows that he is acting contrary to law. It is the case of respondent No.2 that he and his friend were taken in custody on 22<sup>nd</sup> February 2023. The timing is not given but then he says that they were ultimately released at 9.00 p.m. Name of the friend has not been given who was confined but if we read

paragraph Nos. 2 and 3 of the complaint together, then he would be Onkar Salve. He has not been cited as witness in the witness list. Now, every kind of allegation appears to have been levelled, which is of course with *mala fide* intention.

12. Section 330 of the Indian Penal Code deals with voluntarily causing hurt to extort confession or to compel restoration of property, Section 331 deals with voluntarily causing grievous hurt to extort confession or to compel restoration of property, Section 339 deals with wrongful restraint, Section 323 deals with voluntarily causing hurt and Section 506 deals with punishment for criminal intimidation. These Sections are also stated in the complaint. No doubt assault in the police station (if taken as a true fact) need not require previous sanction but for Section 166, 204 of the Indian Penal Code the sanction was necessary and therefore, the learned Magistrate had rightly come to the conclusion that the previous sanction was necessary. Maharashtra Amendment to Section 156(3) of the Cr.P.C. puts an embargo on the powers of the Magistrate to send the matter for investigation. It provides that unless there is a previous sanction or deemed sanction, the Magistrate cannot send the matter for investigation under Section 156(3) of the Code of Criminal Procedure, when the case is against a public servant.

13. The approach of the learned Sessions Judge appears to be a wrong and is not based on proper interpretation and therefore, the impugned Judgment and order deserves to be set aside.

14 Accordingly, we allow the Writ Petition in terms of prayer clause "B" above.

**[SANJAY A. DESHMUKH]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**

asb/FEB25