



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.344 OF 2024

PETITIONERS : 1) **Bharat s/o Mahadeo Kadukar**
a/a 70 yrs., Occ.- Pensioner
r/o Vyankatesh Nagar, Near
MSEDCL Office, Shegaon, Tah.-
Shegaon, Dist.- Buldhana
2) **Prakash s/o Anandrao Tatthe**
a/a 65 yrs., Occ.- Pensioner
r/o Plot No. 9, Shubham Layout,
Katora Road, Nr. Rohni Parks Lawn,
Amravati Dist.- Amravati
3) **Sudhir s/o Satyavijay Walke**
a/a 63 yrs., Occ.- Pensioner
r/o 178 Narmada Colony, Katol
Road, Nagpur
..VERSUS..

RESPONDENTS : 1) **The State of Maharashtra,**
through the P.S.O. of P.S. Dhanaj,
Karanja-Lad, Tah.- Karanja,
Dist.- Washim
2) **Dyaneshwar Bhimraoji Modak**
a/a 64 yrs., Occ.- Nil
r/o At Piprimodak, Karanja-Lad,
Dhanaj, Dist.- Washim.

Mr. V.R. Borkar, Advocate for petitioners
Ms Soniya Thakur, APP for the respondent No.1/State
Mr. S. D. Chande, Advocate for the respondent No.2

CORAM : **ANIL S. KILOR, J.**

DATE : **20th FEBRUARY, 2025**

ORAL JUDGMENT

1. Heard.
2. **Rule.** Rule is returnable forthwith. Heard finally with consent of learned counsel for the parties.
3. The petitioners have been charge-sheeted under Section 217 and 218 read with Section 34 of the Indian Penal Code.
4. Section 217 relates to the public servant, disobeying direction of law with intent to save person from punishment or property from forfeiture.
5. Section 218 deals with the offence namely, public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.
6. In the FIR, it is alleged that Gramsevak Shri G.M. Deshmukh made fabrication in the proceedings book of Gram-Panchayat, Pimpri Modak and thereby, changed the resolution No.9 of the meeting dated 09.08.2007. It is alleged that when the complaint was made to register the offence and to take

action against Shri G.S. Deshmukh, the petitioner No.1 was a Deputy Chief Executive Officer, Washim and he along with the petitioner Nos.2 and 3 prepared reports in a manner to save the co-accused. It is alleged that various reports were submitted by the petitioners during the period 2010-11.

7. The petitioners, in the above backdrop, moved an application for discharge under Section 239 of the CrPC in RCC No.67 of 2019 before the learned Judicial Magistrate First Class, Court No.3, Karanja, on the ground that there is no sanction obtain under Section 197 of the CrPC. The said application came to be rejected, observing that the judgments cited by the petitioners are not relevant, or have no relevance.

8. The learned counsel for the petitioners submits that there is no dispute that the petitioners are public servants and the report was prepared by them in their official capacity and therefore, the sanction under section 197 of the CrPC in the present matter is required and without sanction, the Court cannot proceed with the matter. For this purpose, he has placed reliance on the judgment of the Co-ordinate Bench of

this Court in the case of *Sunil Ramrao Paraskar Vs. State of Maharashtra*¹

9. On the other hand, the learned counsel for the complainant, supports the impugned order. It is submitted that the Hon'ble Supreme court of India in the case of *Shadakshari Vs. State of Karnataka and anr.*² has held that in such matter, sanction under Section 197 of the CrPC is not necessary.

10. The learned APP also supports the impugned order of the learned Judicial Magistrate First Class.

11. In the above referred backdrop, having gone through the record, it is evident that fabrication in the village panchayat record was made in the year 2007 and on various complaints, the reports were submitted by the petitioners during the year 2010 and 2011, in the capacity as Public Officers. The allegations against the petitioners are that they made reports in a fashion so as to save the main accused from any action.

12. Admittedly, the petitioners are not charge-sheeted under Section 420 of the IPC, but they have been charge-

1 2006 (6) Mh. L.J. 690

2 2024 LiveLaw (SC) 42

sheeted under Sections 217 and 218 of the IPC. The maximum punishment for Section 217 is two years, whereas, for Section 218, the maximum punishment, is three years.

13. Section 468 of the CrPC creates bar to take cognizance after lapse of the period of limitation provided in the said provision. For the purpose of the matter at hand, Section 468, sub-section(2-c) is relevant, which says that except otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence punishable with imprisonment for a term exceeding one year, but not exceeding three years, after the period of limitation of three years.

14. The said provision was made with an intention that the sword of prosecution should not remain hanging over the offender for an indefinite period, particularly in cases of less serious offences. At the same time and on the other hands, Court cannot allow persons legitimately within its purview to escape its consequences. The language of Section 473 of the CrPC, therefore, permits the Court to take cognizance of the case after the expiry of a period of limitation if it is satisfied on

the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so as to do in the interest of justice. If the party makes out a case of condonation of delay and has approached the court after expiry of prescribed period of limitation, upon such satisfaction, the Court may condone the delay in order to do justice between the parties.

15. In the present case, admittedly, the alleged act of commission of offence against the petitioners is of the years 2010-11 and the FIR was registered on 09.05.2018, after 7 to 8 years. There is no case made out for condonation of delay in absence of any explanation offered for such delay. Furthermore, there is no observation made by the learned trial Court to the effect that the delay needs to be condoned, as it is necessary to do so in the interest of justice. In the circumstances, the bar under Section 468 of the CrPC, would operate against the respondent No.2 to prosecute the petitioners, after lapse of period of limitation.

16. Furthermore, the judgment in the case of *Shadakshari* (supra) on which the respondent /complainant has relied upon

is in respect of fabrication of documents, wherein the Hon'ble Supreme Court of India has observed that manufacturing of documents or fabrication of records cannot be a part of the official duty of the public servant and section 197 of the CrPC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in discharging of official duties.

17. In the present matter, the allegations are not of fabrication of documents by the petitioners, but preparing a false report. Admittedly, such report was prepared as public servants and in their official capacity and therefore, I am of the opinion that even applying the law laid down in the authority cited by the learned counsel for the respondent/complainant, it is in favour of the petitioners. As such, sanction under Section 197 of the CrPC, in the present matter is required, which is admittedly not obtained.

18. Thus, on the ground of limitation as well as for not having sanction to prosecute the petitioners, the petition

succeeds. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order below Exh.22 dated 28.11.2023 passed by the learned Judicial Magistrate First Class, Court No.3, Karanja, is hereby quashed and set aside and therefore, the application Exh.22 for discharge, filed by the petitioners, is allowed.

Rule accordingly.

(ANIL S. KILOR, J.)