



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

CRIMINAL APPLICATION (APL) NO.677/2024

Jalaluddin Najmuddin Syed,
Aged about 61 years,
Occupation: Retired,
R/o. Plot No.B-34, Walgaon Road,
Paradise Colony, Amravati,
Tah. And District Amravati

... APPLICANT

...VERSUS...

1. State of Maharashtra,
Through Police station Officer,
Police Station, Raipur, Buldhana,
Tah. And District Buldhana.
2. Babanrao Rustumrao Sangale,
Aged about 53 years,
Occupation: Service as Constable,
R/o Sham Nagar, Sagwan Parisar,
Police Station Raipur,
Tah. And District- Buldhana.

...NON-APPLICANTS

Shri D.V. Mahajan, Advocate for applicant
Ms Soniya Thakur, APP for non-applicant No.1/State
Shri S. Kulkarni, Advocate for non-applicant No.2

CORAM : PRAVIN S. PATIL, J.

DATED : 17.02.2026

ORAL JUDGMENT

Heard. By consent of the parties, this matter is taken for final disposal at admission stage.

2. By this application, the applicant seeks quashment of Summary Criminal Case No. 2080 of 2024, arising out of Charge-sheet No. 43 of 2024, registered at Police Station Raipur, District Buldhana, for the offences punishable under Sections 166 and 167 of the Indian Penal Code.

3. The applicant has approached this Court on the ground that the complaint has been lodged against him solely due to personal vengeance on the part of non-applicant No. 2. Prima facie, even if the allegations levelled against the present applicant are accepted in their entirety, no offence is made out against him. Furthermore, for registration of the offence, no sanction for prosecution has been obtained. On these grounds, the applicant seeks indulgence of this Court.

4. The learned APP and non-applicant No. 2 have strongly opposed the present application. According to them, a bare perusal

of the First Information Report would demonstrate that the offences registered against the present applicant under Sections 166 and 167 of the Indian Penal Code are made out and same being not performed in the discharge of his official duties, sanction is not required in the matter, hence, considering the averments in the First Information Report and the stage of the proceedings, it is not a fit case to interfere by this Court in the matter.

5. In light of the submission of both the parties, I have considered the case of prosecution which is in short as under:

On 23.08.2023, a complaint came to be lodged alleging that the complainant was serving at Police Station Raipur. At the relevant time, the non-applicant was the In-charge Police Inspector of Police Station Raipur. By an order of the Superintendent of Police, Buldhana, dated 22.05.2015, the complainant was posted at Deepak Jyoti Patrol Pump, Buldhana, which is run by the Police Welfare Department.

6. It is alleged that while the complainant was working at Deepak Jyoti Patrol Pump, he was maliciously prosecuted Crime

No. 58 of 2016 registered with Police Station Raipur for the offences punishable under Sections 468, 120-B, 109 and 34 of the Indian Penal Code. It is further alleged that during the said period, the complainant was intentionally shown as absent from duty by the non-applicant and that documents pertaining to his attendance were misplaced by the non-applicant. Consequently, an application was filed before the Maharashtra Administrative Tribunal by non-applicant No. 2.

7. It is alleged that the non-applicant withheld the complainant's salary for about eight to nine months by falsely showing him absent from duty, despite his presence during the said period. For redressal of this grievance as well, the complainant approached the Maharashtra Administrative Tribunal. It is further alleged that the complainant sought information under the Right to Information Act with respect to the inward-outward register and other relevant documents; however, the same were not supplied on the ground that such records were not available. On account of the assurance given in that regard, the complainant could not file an appeal within the prescribed limitation period.

8. On the basis of these allegations, the complaint came to be filed before Judicial Magistrate against the present applicant and, accordingly, an order was passed to register offence in the matter, accordingly, offence was registered under Sections 166 and 167 of the Indian Penal Code.

9. Applicant to falsify the submission of complainant pointed out that on 22.05.2015 offence was registered against complainant vide Crime No.58/2016 under Sections 468, 120-B and 109 of the Indian Penal Code and since then, he was missing and absent on duty. Therefore, show cause notices issued on 08.07.2016, 07.11.2016 and 29.01.2017. Hence, it is not the case that action was taken without following due procedure of law.

10. The applicant has further submitted that in the present matter, a departmental inquiry was conducted by Superintendent of Police and, by order dated 19.05.2018, it was specifically recorded that non-applicant No. 2 was found absent from duty during the period from 26.02.2016 to 31.07.2017, and accordingly, the said period was declared as unauthorised absence with the punishment of “no work, no pay”. Hence, according to the applicant, during the

period from 26.02.2016 to 31.01.2017, when non-applicant No. 2 was absent from duty, the allegations levelled against the present applicant do not prima facie appear to be correct.

11. Applicant to demonstrate that complainant is habitual of seeking information under the Right to Information Act, has placed on record document showing during his service tenure filed around 300 applications against different persons.

12. The applicant has also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Suneeti Toteja vs. State of Uttar Pradesh and Another***, in Criminal Appeal arising out of SLP (Cri.) No. 6898 of 2023, decided on 25.02.2025, wherein the Hon'ble Supreme Court has observed in paragraphs 28 and 29 as under:

“28. In another case titled Amrik Singh vs The State of PEPSU, AIR 1955 SC 309, this Court explained the scope of Section 197 of CrPC as follows:

"8. .. It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act

complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

The Court thereunder further concluded that:

"12. ... The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary."

29. As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC. The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she

was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained.”

13. The learned counsel for non-applicant No. 2 and the learned APP have strongly opposed the application. According to them, it was due to the acts of the applicant that the record was misplaced. They further submit that, considering the nature of the allegations levelled in the matter, the investigation is still in progress and is required to be completed, then only a proper conclusion can be drawn.

14. In the present matter, the documents which applicant has placed on record particularly dated 08.07.2016, 12.07.2016 and 07.09.2016 about unauthorised absence are not denied by prosecution nor by non-applicant No.2. So also non-applicant No.2 has not denied the order passed against him by department dated 19.05.2018. Hence, the act committed by applicant against non-

applicant No.2 was in discharge of his duty. Hence, in such matter, prior sanction for the prosecution is necessary in the matter.

15. In light of the documents relied upon by the applicant, I am of the considered opinion that the complaint came to be lodged against the present applicant only on account of personal grudge. It is also evident that non-applicant No. 2 had approached the Maharashtra Administrative Tribunal and that the proceedings before the Tribunal were decided and allowed in favour of non-applicant No. 2. Subsequent thereto, the present complaint came to be lodged against the applicant.

16. It is further pertinent to note that in the departmental inquiry conducted in the matter, it has been specifically recorded that non-applicant No. 2 was absent from duty during the period from 26.02.2016 to 31.01.2017, the same was confirmed by appellate authority. These aspects are not disputed in the matter. Hence, considering the material facts and circumstances of the case, I am of the considered opinion that no offence is made out against

the present applicant. Accordingly, I proceed to pass the following order:

ORDER

- i) The application is partly allowed.
- ii) The proceedings in Summary Criminal Case No. 2080 of 2024, arising out of Charge-sheet No. 43 of 2024, registered at Police Station Raipur, District Buldhana, for the offences punishable under Sections 166 and 167 of the Indian Penal Code, is hereby quashed and set aside.

17. The application stands disposed of. No order as to the costs.

(PRAVIN S. PATIL, J.)

R.S. Sahare