



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 CRIMINAL APPLICATION NO.2109 OF 2024

Balasaheb Gurushantappa Arawat,
Age 52 yrs., Occ. Service as
Assistant Commissioner, Social Welfare,
R/o Office of the Assistant Commissioner,
Social Welfare, Dharashiv,
Tq. & Dist. Dharashiv.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through the Police Inspector,
City Police Station, Dharashiv,
Tq. & Dist. Dharashiv.
- 2 Dinesh Uttamrao Jadhav,
Age 43 yrs., Occ. Service as API,
R/o City Police Station, Dharashiv,
Tq. & Dist. Dharashiv.

... Respondents

...

Mr. Ajinkya Reddy, Advocate for applicant
Mr. A.R. Kale, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 09th MAY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashment of First Information Report vide Crime No.133/2024 dated 28.03.2024 registered with City Police Station, Dharashiv, for the offence punishable under Sections 187, 188 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. Ajinkya Reddy for applicant and learned APP Mr. A.R. Kale for respondent Nos.1 and 2.

3 Present applicant is serving as Assistant Commissioner, Social Welfare, Dharashiv. Respondent No.2 in his official capacity had given a letter to applicant that two employees serving under him should be made available as panch witnesses, however, applicant is stated to have not responded and, therefore, First Information Report has been registered.

4 Learned Advocate appearing for applicant submits that when applicant had received the communication from respondent No.2, in response thereto he had made communication regarding the scarcity of employees for supplying them as panch witnesses. In fact, after the Government Resolution dated 12.05.2015 was issued, present applicant had made communication that due to scarcity of employees it will not be possible to send the employees

working under him to act as panch in various matters. Therefore, he prayed for making the panch available from other departments also and give it in rotation to the Police Station. Accordingly, the Sub Divisional Magistrate had fixed the days. As per the said rotation, since it was Tuesday, it is stated that a letter was given to applicant to supply the employees, however, by letter dated 26.03.2024 applicant gave his inability. It was specifically stated that on each Tuesday one employee was sent since last three years to act as panch. This arrangement is causing difficulty in functioning of the office work and, therefore, he had refused to make the panch witness available. It cannot be stated that thereby he has committed any offence. He relies on the decision of this Court in **Yogesh Sahebrao Sonwane vs. The State of Maharashtra and another** in Criminal Writ Petition No.1097 of 2024 decided on 03.02.2025. He also relies on the decision in **Swararaj @ Raj Shrikant Thackeray vs. State of Maharashtra** [AIR OnLine 2023 BOM 2014], wherein it has been held that -

“Cognizance of offence under Section 188 of the Indian Penal Code can be taken by Magistrate only on the basis of complaint in writing of public servant concerned or of some other public servant to whom he is administratively subordinate.”

Thereby it is then held that First Information Report is not maintainable. Therefore, there is no necessity to exercise powers under

Section 482 of the Code of Criminal Procedure.

5 Per contra, learned APP strongly opposed the application and submits that every citizen is supposed to help the police in order to have authenticity and reduce the hostility of panch witness. The State Government has taken step and issued circular dated 12.05.2015. It was the bounden duty of the applicant to provide panch witness i.e. the employee serving under him to act as panch witness. Even his own arrangement was considered by Sub Divisional Magistrate, Osmanabad and for his office Tuesday was fixed. Under such circumstance, he could not have then refused to send any person.

6 It is very much unfortunate that still a mentality prevails in the Police Department that everybody should give preference to the work directed by the police or to help the police. Of course, every citizen is duty bound to help the police, but that does not mean that refusal of the same should be considered as an offence in all the situations. In order to better understand the facts, especially the ingredients of the offence we would like to reproduce the relevant part of First Information Report :

“त्यावरून आम्ही पो.स्टे. धाराशिव शहर गुरन 130/2024 कलम 307, 353, 332, 143, 147, 148, 149, 336, 109, 504, 506 भादविसह कलम 3 सार्वजनिक मालमत्ता विद्रुपीकरण अधिनियम सह कलम 135 मपोका प्रमाणे दिनांक 26.03.

2024 रोजी दाखल असल्याने सदर गुन्ह्यातील घटनास्थळ पंचनामा व जप्ती पंचनामा करणेकामी दोन शासकिय पंच उपलब्ध करून देणेबाबत पो.स्टे.धाराशिव शहर जा.कं.1015/2024 दिनांक 26.03.2024 अन्वये पत्र तयार करून बीट अंमलदार पोहेकॉ/379 गलांडे, 872 पाटील दोघे ने. पो.स्टे. धाराशिव शहर यांना समाज कल्याण अधिकारी, कार्यालय धाराशिव येथे ठरवून दिलेला मंगळवार हा वार असल्याने पाठविण्यात आले होते. सदर पत्राची आवक घेवून उलट टपाली समाज कल्याण धाराशिव यांचे जा.कं. धारा/आस्था/पो.पंच/2023-2024/1192 दिनांक 26.03.2024 अन्वये सहा.आयुक्त श्री. बी.जी. अरवत यांचे स्वाक्षरीने गंभीर गुन्ह्याचे तपासकामी दोन शासकिय पंच उपलब्ध करून देणे बाबत मुलतः असे कर्मचारी पुरविण्याबाबत तरतुद नसल्याचे उलट टपाली लेखी पत्र देवून शासकिय पंच पुरविले नाही. त्यामुळे आम्ही सदर गंभीर गुन्ह्याचे घटनास्थळ पंचनामा व जप्ती पंचनामा करणेकामी ऐनवेळेस खाजगी पंच उपलब्ध करून त्यांचे समक्ष पंचनामा केला आहे. सदर गुन्हा हा अतिशय गंभीर स्वरूपाचा असल्याने व शासनाचे आदेश असताना सुध्दा समाज कल्याण सहा.आयुक्त श्री. बी.जी. अरवत समाज कल्याण धाराशिव यांनी शासकिय पंच पुरविले नाही. त्यांनी शासनाचे आदेशाचे व मा. जिल्हाधिकारी, धाराशिव यांचे आदेशाचे अवमान करून आदेशाचे उल्लंघन केले आहे म्हणून माझी सहा.आयुक्त श्री. बी.जी. अरवत समाज कल्याण कार्यालय, धाराशिव यांचे विरुद्ध कलम 188, 187 भादवि प्रमाणे कायदेशिर फिर्याद आहे.”

Section 187 of the Indian Penal Code punishes a person being bound by law to render or furnish assistance to any public servant in the execution of his public duty, **intentionally omits to give such assistance**, therefore, the basic ingredients here the willful neglect or intentional omission to arrest a public servant. Here, the fact is not in dispute that immediately to the Police Inspector, who was conducting the investigation in the offence under Section 307 of the Indian Penal Code, the present applicant

gave it in writing as to what is the problem with him for not supplying or making available the Government Servants under him for the purpose of panchnama. He has stated that due to scarcity of employees it will not be possible to send the employees working under him to act as panch in various matters. Here, refusal is different than inability due to genuine reason. Here, the letter which was given by the present applicant clearly demonstrates his inability for a genuine reason. It is not the case in First Information Report that the reason that was given in the letter was found to be false or incorrect. Therefore, the basic ingredient of Section 187 of the Indian Penal Code was not at all attracted.

7 For Section 188 of the Indian Penal Code we would like to rely on the decision in **Ram Monohar Lohia and others vs. State of Uttar Pradesh and others** [AIR 1968 Allahabad 100], wherein it has been held and it can also be spelt from the section itself that -

“In order to attract the section following ingredients are mandatory :

- 1) that there must be an order promulgated by the public servant; 2) that such public servant is lawfully empowered to promulgate it; 3) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management has disobeyed; and 4) that such disobedience causes or tends to cause (a) obstruction, annoyance or risk of it to any person lawfully

employed; or (b) danger to human life, health or safety; or (c) a riot or affray.”

Here, the letter given by informant in the case under Section 307 of the Indian Penal Code cannot be considered as promulgation, because he himself was relying upon the Government Resolution dated 12.05.2015. Perusal of the said Government Resolution would show that it was issued in the background that panchas were turning hostile and because of which the percentage of conviction was going down and, therefore, if the Government Servants are taken as panchas, then it would help in solving the problem of hostility of the panchas. It is stated in clause (ii) that in those offences where the punishment is seven years or more than that, then the Investigating Officer should as far as possible engage the Government Servant as panch

[2) ज्या गुन्ह्यामध्ये सात वर्ष किंवा सात वर्षांपेक्षा जास्त शिक्षा नमूद केली असेल अशा प्रकरणांमध्ये तपासी अंमलदारी यांनी शक्यतोवर सरकारी कर्मचा-यांची पंच म्हणून सेवा घ्यावी.]

The word is used ‘as far as possible’, therefore, it was not compulsory as such and secondly when the letter was given by informant, in a way threat has been given that if in spite of receipt of letter such employee is not made available, then it would amount to offence under Section 187, 188 of the Indian Penal Code. Panchas are not to be procured by giving threats. It is a voluntary act. It appears that informant himself had not understood to Government Resolution and, therefore, at the cost of repetition, we say that

the letter which he has given dated 26.03.2024 cannot be considered as an order promulgated under a law. Government Resolution is not a law. Of course, it has to be followed.

8 Even it appears that after First Information Report was registered against applicant, there was a communication from Commissioner, Social Welfare Department, Mumbai to District Magistrate and District Superintendent of Police, Dharashiv regarding the sentiments of employees working in the Department of Social Welfare. Those persons are required to act as panch, time and again, and still they are supposed to work in their official capacity and achieve the targets those are given to them. They would also be then required to appear before the Court for giving evidence. The security of the employees at Dharashiv was also highlighted. It also appears that District Magistrate/Collector had taken cognizance of the said letter and by letter dated 04.04.2024 had given a communication to District Superintendent of Police, Dharashiv regarding the sentiments and asked him to give directions to abstain the Police Officers from lodging offences for not supplying the panch witness i.e. the employees. We again highlight that the Police Officers cannot make it compulsory to any citizen even the employee that they should help the Police Officers. Though there is a duty that does not mean that there is a compulsion and when the applicant as the head of

the said Department was putting his difficulty in writing, it cannot be taken as a willful disobedience of any order. It would be unjust to ask the applicant to face the trial and, therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) First Information Report vide Crime No.133/2024 dated 28.03.2024 registered with City Police Station, Dharashiv, for the offence punishable under Section 187, 188 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Balasaheb Gurushantappa Arawat.**

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

agd