



Cri.M.A. No. 3292/2022
 Dr. Abhishek and others Vs.
 Dr. Vitthal and others.
 CNR No.MHPU04-043338-2022

ORDER BELOW EXH. 1

1. Perused the complaint, affidavit in support thereof and documents filed on record. Heard the complainant in person. The present application is filed for direction of investigation under section 156(3) of the Code of Criminal Procedure.

2. It is submitted that, accused no. 1 is Principal of Government Polytechnical College while accused no. 2 is Director of Technical Education. Since 2016 to 2020 the accused no. 1 was Principal of Government Poly technical, Karad. He himself passed office order to get consideration of additional duty. He infringed Government G.R. bearing no. टीईडी २००९/(९४/०९)/तांशी —५ दिनांक २० डिसेंबर २०१७, महाराष्ट्र शासन वित्त विभाग शासन निर्णय दि. २३.०५.२००६ व २७.१२.२०११. He obtained wrongful gain and thereby caused wrongful loss to the government. The complainants had made complaint with Chatushrungi Police Station via E-mail on 26.07.2022. Whereupon accused no. 2 made order to Joint Directorate Pune region to make inquiry of accused no. 1. It is alleged that, both the accused obtained wrongful gain on the basis of illegal notification. They have committed the offences p/u/s. 409 and 120-B r/w. 34 of IPC. It is submitted that, the accused have illegally obtained wrongful gain and it was not part of their official duty. Therefore, sanction under

section 197 of Cr.PC. is not required to register crime against them. The complainant relied on following case laws.

1. *A.R. Antulay Vs. Ramdas Srinivas Nayak and anr. AIR 1984 SC 718*
2. *State of U.P Vs. Paras Nath Singh AIR 2009 SC (SUPP) 1615*
3. *Raghunath Anant Govilkar Vs. State of Maharashtra and ors. AIR 2008 SC (SUPP) 1486*
4. *State of Kerala Vs. V. Padmanabhan Nair AIR 1999 SC 2405*
5. *Kul Chandra Baral Vs. State of Sikkim 2012 Cri.L.J. 3725*
6. *Brij Nandan and anr. Vs. State of Punjab CRM-M-886-2022*
7. *Nirmal Singh Kahlon Vs. State of Punjab and ors. 2008 CRI.L.J. 4096*

I have gone through case laws cited supra. There is no dispute about ratio of said case laws.

3. The accused alleged to have committed the offences p/u/s. 409 and 120- B r/w. 34 of IPC. It is alleged that, the accused have obtained wrongful gain and caused wrongful loss to the Government on the basis of illegal notification. The complainant has filed numerous documents in support of the complaint including Government notifications. The alleged offences are based upon documentary evidence. As stated above, the complainant have filed necessary documents in support of their complaint. Therefore, I am of the considered view that, investigation through police machinery is not warranted in this case. Therefore, I am not inclined to exercise discretionary power of issuance of order of investigation under section 156(3) of Criminal Procedure Code. Thus, considering the

allegations made in the complaint it will be just and proper to proceed with application/complaint as per Chapter XV of the Criminal Procedure Code. In the result, I pass following order.

ORDER

1. Prayer of direction of investigation under section 156-3 of Cr.P.C. is rejected.
2. The complainant is at liberty to proceed with the matter as per the provision of section 200 of Cr.P.C.
3. This matter be registered as Regular Criminal Case as per rules.

Date.01/10/2022

(S. V. Nimse)
Judicial Magistrate F. C.
Court No.9, Pune