

ORDER BELOW EXH. 19

1. The accused has filed this application for directing the prosecution to withdraw the case under section 321 of Cr.P.C and to discharge the accused.
2. Read application and say filed by the learned APP.
3. Learned counsel for the accused Adv. Dharskar has submitted that the accused is prosecuted for alleged offence of misappropriation of Rs.9,12,036/-. The offence has been registered on 02.03.2013. The accused has deposited the alleged amount of misappropriation and he has been reinsisted on the service by the State Government. The Rural Development Department of Government of Maharashtra has issued one circular No. VPF1575/3275/XXIII dated 06.05.1975 wherein it has been directed that if the amount of misappropriation has been paid by the delinquents within one month from the date of misappropriation being noticed, no prosecution shall be launched against that person. As the accused has deposited the alleged amount of misappropriation. It is required to direct the prosecution to withdraw the case and the accused be discharged. He relied on circular 1) Government of Maharashtra General Administration Department circular No. CDR-2177/3720/166/XI on dated 30.11.1978. 2) Government of Maharashtra, Rural Development Department, circular No. VPF 1575/3275/XXIII on dated 06.05.1976.

4. The learned APP has submitted as per the say. He submitted that accused has misappropriated Rs. 9,12,036/-. The offence is non-bailable and grievous in nature. The matter is fixed for evidence. From the record, prima facie it appears that the accused is guilty of the offence charged. The accused has cheated various persons and those witnesses have stated against the accused in their statement. Therefore, the application is liable to be rejected.

5. Heard both side. The following points arise for determination, to which I have recorded my findings for the reasons stated thereafter.

Sr. No.	Points	Findings
1.	Whether it is required to direct the prosecution to withdraw the case in view of circular dated 06.05.1976 ?	..No
2.	Whether the accused is entitled to be discharged ?	..No
3.	What order ?	Application is rejected

REASONS

6. I have considered argument of both parties I have gone through the record and circular relied by the learned counsel for the accused.

7. On perusal of the FIR it appears that it has been alleged that the accused was serving as Junior Clerk in Primary Health Center and under obligation to prepare salary bills of the

employees of PHC and to take signature of the In-charge Officer and then to submit the salary bills to Panchayat Samiti Karanja, to collect the cheque and to forward the same alongwith salary statement to the Co-operative Bank Kannamwargram Branch. In the June 2012, it has been observed that huge amount has been deposited in the bank account of the accused. Therefore, the bank statement of the accused for the period January 2010 to June 2012 are demanded and it is found that comparatively much more amount than the actual salary of the accused has been deposited in the bank account of the accused. Therefore, explanation of the accused has been called. However, he has failed to give his explanation. Therefore, enquiry has been set up against the accused. He has been suspended as per order dated 07.08.2012. On 07.11.2012, enquiry report has been received. On 25.10.2012, order for lodging report in Police Station against the accused in respect of misappropriation of the amount has been received. On 30.10.2012 the accused has deposited the amount in compliance of order of CEO Wardha. It is alleged that during the period of March 2010 to May 2012 the accused has forged signature of In-charge officer and submitted monthly salary statement in the bank and thereby caused to deposit some portion of salary of employees in his own bank account and thereby caused loss of Rs. 9,12,036/-.

8. In support of the present application, the accused has filed copy of letter of Medical Officer Primary Health Center

Kannamwargram informing the C.E.O. Zilla Parishad Wardha, about depositing the alleged misappropriated amount of Rs. 9,12,036/- by the accused. He has also filed the receipt and challan showing that he has deposited Rs. 9,12,036/- in the Co-operative Bank on dated 30.10.2012. It is admitted fact that the accused has deposited the alleged misappropriated amount.

9. I have gone through the circular No. VPF 1575/3275/XXIII on dated 06.05.1976. The circular is about 'Misappropriation funds of – Procedure for dealing with the cases of.' Clause 2 (a) of the circular provides that "Where the amounts misappropriated have been fully recovered or paid by the delinquents within one month from the date of the misappropriation being noticed, no prosecution should be launched and cases of this category already in the court should be withdrawn. However, this will not preclude the action against the Sarpanch/Upsarpanch or a member under Section 39 of the Bombay village Panchayats Act, 1958."

10. The above mentioned circular has been discussed in *Natha Shankar Kutharwade Vs. State of Maharashtra* 1992 Mh LJ 580 and *Sheshrao Bhagwanji Hirulkar Vs. State of Maharashtra* 2001 Cr. LJ 3193.

11. In *Natha Shankar Kutharwade Vs. State of Maharashtra*, wherein Criminal case for misappropriation for Rs. 45,269/- had been filed against the Talathi. The important

question about scope of Government of Maharashtra circular dated 06.05.1976 has been raised. The Hon'ble Bombay High Court has observed that "In the Preamble itself, the Government is shown anxious about the delinquents in respect of small amounts and technical faults being put to trial with no perspective or any tangible reasons. It is stated in Para 2 that it had come to the notice of Government that in cases of misappropriation of very small amounts and offences which are of technical nature, the delinquents were being prosecuted by the Chief Executive Officer of the Zilla Parishad and proposals have been made to the Government that prosecution should not be launched in such cases. This would, therefore, mean that the Government felt that when the misappropriation was of very small amounts or that the so called misappropriations were of the technical nature, it was desirable that the Government servants should not be put to trial or that the prosecution should not be launched. Clause (a) provides that where the amounts misappropriated have been fully recovered or paid by the delinquents within one month from the date of misappropriation being noticed, no prosecution should be launched and in case the prosecutions were launched, the same should be withdrawn. The only exception is in regard to prosecutions of Sarpanch and Upa-Sarpanch or member under Section 39 of the Bombay Village Panchayats Act, 1958. The meaning that can be deduced is that in case the delinquent repaid

the amount within one month of the misappropriation coming to the notice of the Department, the Department should not file any prosecution. In case the prosecution is launched before the Circular coming into force, the same should be withdrawn.”

12. The Hon’ble Court has further observed that “Reverting back to the above preamble, it would be manifest that what was in the mind of the Government was the misappropriation of small amounts and by no means the misappropriation of large amounts. The Government knew that prosecuting the delinquent for small amount was not to bring in any tangible benefit. However that cannot be said about the large amounts defalcated by the delinquents. But if this Circular is to be utilised for misappropriation of large amounts, per se this Circular would be struck down under Article 14 of the Constitution. The Government can well be said to have been aware of this constitutional infirmity and therefore, could not have envisaged the misappropriation of large amounts. It is not comprehensible that the Government would relieve those delinquents who have committed defalcations of large amounts by following ingenious methods.”

13. The Hon’ble Court has held that “ the circular do not govern the misappropriation of large amount of and the cases of well designed misappropriation.” The Hon’ble High Court thereby rejected the application.

14. In *Sheshrao Bhagwanji Hirulkar Vs. State of*

Maharashtra case the Hon'ble Bombay High Court while giving concurrent view it is held that "the said circular in question is not of general application and it applies only to the employees working to the Rural Development Department."

15. Admittedly the alleged misappropriation is in respect of Rs. 9,12,036/-. Further it appears that, the accused has forged signature of the salary statement of March 2010 to May 2012 and thereby misappropriated amount of Rs. 9,12,036/- from the salary of other employees. The alleged irregularity, has been noticed in the month of June 2012. Thereafter explanation of the accused has been called. However he failed to give explanation. The complaint has been forwarded to Health Officer Wardha. Thereafter enquiry has been set up against the accused on 28.06.2012. On 07.11.2012 order for lodging FIR against accused has been passed. Thereafter on 30.10.2012 the accused has deposited the alleged misappropriated amount. Therefore, prima facie it appears that, the accused has used the misappropriated amount for the period of about 2 years. Certainly it is not a technical error or mistake. It shows intention of the accused. Further the amount is not small quantity. Therefore, in view of the ruling in *Natha Shankar Kutharwade* case, the circular relied by the accused is not applicable to the present case as the alleged offence involves misappropriation of large amount and it appears to be well designed plan. Therefore, it would not be proper to direct the

prosecution to withdraw the case. Therefore the accused is not entitled to be discharged. Hence I answer point No. 1 & 2 in negative and I pass the following order:

Order

The application is rejected.

Karanja (Gh.)
Dt. 29.01.2021

(M. M. Alone)
Judicial Magistrate First Class,
Karanja (Gh.)