

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 356 OF 2014
WITH WP/381/2014

BABUKHAN CHANDKHAN FAROOQUI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Sachin S. Deshmukh.
APP for Respondent/State : Mrs. S.G. Chincholkar.
Advocate for Respondent No.4 (Intervenor) : Mr. R.N. Dhorde Senior Counsel
i/b Mr. V.R. Dhorde.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 26th FEBRUARY, 2015.

PER COURT:

1] By filing Criminal Writ Petition No. 356 of 2014, the petitioner is praying for directing the respondents to undertake the investigation as contemplated under the provisions of the Code of Criminal Procedure and to submit continuous progress report of Crime No. 11 of 2014 registered with Kinwat Police Station, District Nanded. The very same petitioner, by filing Criminal Writ Petition No. 381 of 2014 is praying for quashing and setting aside the letter dated 15.3.2014, issued by the Joint Secretary, Water Resources Department, to the Additional Chief Secretary (Revenue), Revenue and Forest Department, Mumbai.

2] Heard learned counsel appearing for both the parties and perused the documents made available on record. It is not in dispute that

this Court, while deciding Criminal Writ Petition No. 809 of 2013 with other connected matters, has passed order on 24.1.2014, after noting that Crime No. 11 of 2014 has been registered at Kinwat Police Station, District Nanded, for the offences punishable under various sections of the Indian Penal Code. The observations of this Court in paragraph Nos. 5,6 and 10 of the said order, needs reproduction and those read thus :-

“5. Once the FIR has been registered, criminal law has been set in motion, then we have no doubt that the Investigating Officer is answerable and accountable, if not to any higher authorities within the hierarchy atleast to the competent Criminal Court in which reports of investigation to be filed and which Criminal Court has all the powers, either to accept the reports or to direct further investigation.

6. Therefore, when the law has adequate remedies for parties like the petitioners to bring to the notice of the competent Criminal Court any glaring defects or deficiencies during the course of investigation, then all the more, we need not keep these Petitions and Applications pending.

10. The Investigation machinery so also the departmental authorities are not precluded from proceeding against not only the respondents to Criminal Writ Petition No. 809 of 2013 but equally the petitioners in that Criminal Writ Petition and also such persons who are stated to be involved in the commission of the crime or have caused loss to the public exchequer by their acts of omission and commission.”

3] Learned counsel for the petitioner vehemently argued that after registration of the crime in question, nothing is done by the Investigating Officer and, therefore, this Court should monitor the investigation and periodical report should be called from the Investigating Officer. He further argued that after disposal of the said Writ Petition No. 809 of 2013, after noting that the crime is registered against the concerned, the State Government ought not to have issued the letter dated 15.3.2014 recommending deletion of name of the Executive Engineer from the FIR. According to learned counsel for the petitioner, in this manner, the provisions of the Code of Criminal Procedure are circumvented by the State.

4] Shri Dhorde, learned Senior Counsel appearing for the respondent Vidarbha Irrigation Development Corporation (VIDC) submitted that the present petitions at the instance of the petitioner who is an absconding accused are not maintainable. He further argued that, in fact, the present petitioner and other accused persons had assaulted the Officers of the VIDC when they had been to the spot for taking measurement of the land. He further argued that the lands were acquired by private negotiations and, therefore, the Revenue Officers had vindictively submitted the report, on extraneous considerations.

5] We may note that the offence is already registered and the matter is under investigation. The impugned letter dated 15.3.2014 is not even issued by the Home Department of the State Government. It is a

communication from the Water Resources Department to the Revenue Department. The investigation is domain of Investigating Officer and he has to decide, after examining the evidence collected by him, as to who needs to be arraigned as accused in the said crime. Opinion of other Officers of the State cannot influence him.

6] Learned counsel for the petitioner placed reliance on the case of *Sushila Devi vs. State of Rajasthan and others (2014) 1 SCC 269*, wherein after registration of the FIR, the court had monitored the investigation. However, in the case in hand, this Court, while deciding Criminal Writ Petition No. 809 of 2013 with connected matters has held that Investigating Officer is answerable and accountable to the Criminal Court which has all powers either to accept report or to direct further investigation. This Court has further made it clear that the Investigating Officer is not precluded from proceeding against not only the respondents but against all such persons who are found to be involved in the commission of crime. As such, the impugned letter dated 15.3.2014 cannot be given any over-bearing importance and it cannot obstruct the investigating Officer.

7] So far as monitoring the investigation of the crime is concerned, this Court, while deciding Criminal Writ Petition No. 809 of 2013 has already made clear that the Investigating Officer is accountable to the Criminal Court. The concerned Court of learned Judicial Magistrate First class can very well monitor the investigation of the said crime. Shri Dhorde,

learned Senior counsel for the respondent/VIDC has rightly relied upon judgment in the matter of *T.C. Thangraj vs. V. Engammal and others (2011) 12 Supreme Court Cases 328* wherein, the Honourable Apex Court has held that the investigation can be monitored by the Magistrate by exercising powers under the Code of Criminal Procedure.

8] In the light of the foregoing discussion, both the petitions are devoid of merit and are accordingly disposed of.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-