

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

CRIMINAL WRIT PETITION NO.1380 OF 2014

Sachin Bhivasenrao Shinde

...Petitioner

VERSUS

The State of Maharashtra & ors.

...Respondents

.....
Shri A.D.Ostwal, advocate for petitioner

Shri M.M.Nerlikar, A.P.P. for respondent no.1/State

.....

CORAM : A.B.CHAUDHARI & INDIRA K.JAIN, JJ.

DATED : 15th SEPTEMBER, 2015

ORDER :

- 1] Heard learned counsel for the rival parties at length.
- 2] Following are the prayer clauses A, B, C and D in the present Writ Petition.

“(a) Declare the detention of the petitioner by the Officers of Tophkhana Police Station, Ahmednagar in C.R.No.12/2011 from 17.6.2011 to 18.6.2011 as illegal and declare that there has been gross violation of the fundamental rights of the petitioner guaranteed by Article 21 of the Constitution of India.

(b) That this Hon'ble Court be pleased to declare the arrest and detention of petitioner in police lock up on 17.6.2011 as illegal and in violation of Article 21 of the Constitution of India, 1950.

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents to produce before this Hon'ble Court the records of Police N.C. No.12/2014 under Section 110 & 117 of the Bombay Police Act, 1951 registered with Tophkhana Police Station, Ahmednagar on the complaint lodged by the Respondent No.6, and

pursuant to the same, Order passed by Ld. J.M.F.C., 5th Court, Ahmednagar, dated 18.6.2011 thereby, imposing penalty of Rs.300/- (in default to suffer simple imprisonment of 7 days) in STC/2471/2011 and after perusing the same this Hon'ble Court may kindly be pleased to quash and set aside the same.

(ci)

(d) That this Hon'ble Court may kindly be pleased to direct the Respondent No.3, 4 & 5 to register an F.I.R. Under Sections 166, 167, 196, 204, 219, 420, 467, 468, 471, 506(2), 120-B r/w 34 of the IPC and the investigation in the same be carried out under the 'supervision' and 'monitoring' of this Hon'ble Court by a responsible officer of a rank that this Hon'ble Court may be pleased to nominate for the aforesaid purposes."

3] This court vide order dated 17th February, 2015 expressed that respondent no.4 Superintendent of Police, Ahmednagar has not applied his mind and respondent no.5 did not care to file proper reply.

4] Thereafter respondent no.4 Superintendent of Police, Ahmednagar has filed affidavit in reply on 8.6.2015. Paragraphs 4, 5 and 6 of the affidavit in reply read as follows :-

"(4) The deponent says and submits that, I have perused the statements and documentary evidence of the respondents and applicant. As per the record the respondent nos. 6 to 9 were temporarily appointed on the duty of Escort and Raid as per the written orders dtd. 26.1.2011 from the then Superintendent of Police, Ahmednagar. They have been appointed temporarily from 16.00 hrs of 17.6.2011 at S P Office Square for registering the cases under Motor Vehicle Act by oral orders of the then Superintendent of Police. When they were on duty the applicant was seen proceeding towards Aurangabad by his bullet motorcycle without any number on the front number plate. The respondent no.6 signaled him to stop and he stopped at some distance from the square. Respondent no.6 Constable Pund told him that, there is no number on his bullet hence he have to deposit the legal fine else his motorcycle would be seized. The applicant Sachin Shinde started to act in indecent manner

hence the respondent nos. 6 to 9 along with P C Pund took the applicant Sachin Shinde in their possession along with the bullet motorcycle. They took him to traffic control Branch and thereafter at about 17.45 they took him to Tophkhana Police Station by a government vehicle. Respondent no.6 P C Pund registered a complaint against the applicant and handed him over to Tophkhana Police. The then Police Station in-charge Shri Meghraj Shivraj Dhanlagade, respondent no.11, have taken entry in the Station Diary at Sr.no. 26 at 16.45 hrs. Police Station in-charge have accepted that he has wrongly entered the time as 16.45 instead of 17.45 so also he had admitted his fault that, he has registered that, he was speaking loudly on mobile phone instead of loudly shouting as per the report of Constable Pund. As soon as the mistake was observed he applied whitener on the word mobile and wrote the word "loudly" on it. Due to this mistakes he was punished by stoppage of increment payable to him on 23.4.2014. (without affecting the future increments). (The order of punishing Respondent no.11 is annexed herewith and marked as Exh.R 2).

(5) The deponent further says and submits that, thereafter the charge of the station diary has been taken by the respondent no. 10 Ansar Shabbir Shaikh on 17.6.2011 at about 21.10 from Assistant Sub Inspector Dhanlagade. After taking charge of the police station diary, he sent the applicant Sachin Shinde with report to the Civil hospital for medical examination. After his medical examination before arrest he was arrested at about 23.25 under sec.79 and his cheherepatti have been recorded in the cheherepatti Register with the help of subordinate employees. Camp Police Station, Aurangabad was directed on phone to give information of his arrest to his relatives. This was noted in the station diary at Sr.No.37. After arresting the accused, A.S.I. Shaikh have taken cheherepatti of the arrested person and recorded it to the cheherepatti register with the help of the subordinate. At the time of recording cheherepatti by mistake he put wrong timing as 11.00 instead of 23.25, so also the height was also recorded wrongly as 6' 6" instead of 5' 6". Due to these mistakes in record the then Superintendent of Police had given punishment of strict warning to A.S.I. Shaikh on 23.4.2014. A copy of the said order is annexed herewith and marked as Exh.R 3.

(6) The deponent says and submits that, after perusing the case paper of Shri Sachin Shinde of medical examination prior to arrest, no signs of assault or wounds have been recorded in the case paper nor the applicant have given complaint to the Medical Officer regarding assault by the hands of police. "

Upon perusal of the the above said affidavit in reply, we find that so far as mistakes regarding time were concerned, the same was found to be correct during inquiry, that is why the Superintendent of Police had given warning to the concerned Officers as mentioned in para 5 of the affidavit in reply. The grievance is about the alleged legal arrest of the petitioner, and therefore, claim for compensation.

5] It is clear from the averments in para 4 of the affidavit in reply that the petitioner was driving a bullet motor cycle without number plate on the front side. Therefore, respondent no.6 had stopped him at some distance and when stopped, instead of paying fine, he started behaving in indecent manner with the police officer. Then he along with the motor cycle was taken to traffic control room and thereafter he was taken to Tophkhana police station, Ahmednagar by government vehicle and the complaint was registered. It is on this complaint, he was arrested, and therefore, he claimed that intention on the part of police officer was mala fide and he should be compensated. He was produced for medical examination and no injury was found upon his medical examination. Thereafter, the petitioner was produced before the learned 5th Judicial Magistrate, First Class, Ahmednagar in S.T.C. No. 2471 of 2011 on 18.6.2011.

We are satisfied with the affidavit filed by the Superintendent of Police and we accept and appreciate the action taken by the Superintendent of Police, Ahmednagar.

6] Learned counsel for the petitioner submitted that the printed form of admission of offence with the learned Magistrate, though is signed on 18.6.2011 by the petitioner, his signature was taken when the form was blank with already printed answers. It is not in dispute that he admitted the offence and after the order was passed by the learned Magistrate, he paid fine of Rs.300/- on 18.6.2011. Learned counsel for the petitioner fairly stated that his client has not challenged the said order anywhere on any ground whatsoever. Therefore, he agrees that the order has attained finality.

7] This Writ Petition came to be filed in this court for above reliefs on 21.10.2014 in respect of alleged incident of detention, dated 17.6.2011. The petitioner has explained in para 48 of the petition the reasons for delay in filing the petition. We find from para 48 of the petition that the delay has not been explained even to the minimum and except for saying that his attempts to get justice from the officers failed, there is no other explanation.

At any rate, we find that the delay is inordinate and if the petitioner was so serious about his fundamental rights or the alleged misbehaviour of police, etc., he would have left no time in approaching this court. On the contrary, in our opinion, the petitioner's grievance is clearly after thought all the more he having

admitted the offence before the learned Magistrate. We are, therefore, not inclined to entertain the present Writ Petition, since no relief in favour of the petitioner can be granted.

8] We have taken note of the fact that there is increasing tendency on the part of the persons like the petitioner to indulge in being arrogant with the police staff instead of being peaceful and law abiding. The petitioner was found running the bullet motor cycle without number plate, which was certainly serious act on his part, but then he quarreled with the police when he was stopped. We cannot countenance such type of acts of the petitioner and he must be saddled with some costs. That being so, we make the following order.

ORDER

Criminal Writ Petition is dismissed with costs of Rs.5,000/- payable by the petitioner within four weeks to the Superintendent of Police, Ahmednagar.

[INDIRA K.JAIN, J.]

[A.B.CHAUDHARI, J.]

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