

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

Criminal Writ Petition No.1230 of 2013

Vyankatrao s/o Jivanrao Bhosale. .. **Petitioner.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Milind Patil, Advocate, for petitioner.

Shri. S.A. Ambad, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 7th JULY 2015

ORDER:

1) The petition is filed to challenge the order made by the learned Judicial Magistrate First Class, Ausa on Exhibit 156 in RCC No.166/2007. Both the sides are heard.

2) The aforesaid application was moved by the original complainant for giving direction to the Investigating Officer Shri. S.S. Doke to comply with the

order made by this Court in one writ petition. He was directed to produce muddemal property recovered during investigation in the Court. Direction was also sought against the same Investigating Officer to file affidavit with regard to the production of the property and it was indirectly in respect of compliance of the order made by this Court.

3) The learned Judicial Magistrate has ordered that the Superintendent of Police should produce muddemal tempo vehicle in the Court. It is observed that the direction to the said Investigating Officer to file affidavit cannot be given. It is observed that the said Investigating Officer has failed to produce muddemal in the Court as directed by the High Court.

4) The submissions made, reply affidavit and also the various reports given to the Additional Public Prosecutor by the Superintendent of Police Latur show that preliminary inquiry was held and in the preliminary inquiry the aforesaid police officer was found responsible for irregularities like handing over the muddemal

property viz vehicle to the accused and not producing the property even in the police station. It appears that not only one vehicle but one letter pad were recovered during investigation by the said investigating officer as per the record.

5) It is the case of the original complainant that he was forcibly taken to a place, he was illegally detained by the accused and his signatures were obtained on blank papers by the accused and by using force some receipts were also obtained from him. Learned counsel for the petitioner submitted that as per his information this record was also recovered by the same Investigating officer but that is not produced. It appears that there is no material to indicate that such record was recovered. If the original complainant is able to show that such record was also recovered then that case will fall under section 201 of the Indian Penal Code and appropriate action can be taken against the police officer. Due to fault of the Investigating Officer, preliminary inquiry was held, he is found responsible and so departmental inquiry can be started against the said police officer in Latur District

where the irregularities were committed by the investigating officer. Only because he is transferred to other station, the Superintendent of Police Latur will not loose his power or jurisdiction and he can conduct the departmental enquiry as the aforesaid irregularities were committed within his jurisdiction.

6) Learned counsel for the original complainant has made one more submission. He made submission that under section 302 of the Cr.P.C. permission was granted to the the counsel appointed by the complainant to conduct the prosecution. Learned counsel submitted that in spite of giving such permission learned JMFC is time and again asking the counsel appointed by the complainant to make application and make submission through the learned APP. In that case it can be said that there must be some misconception in the mind of the JMFC. When permission under section 302 of the Code of Criminal Procedure is granted, the prosecution can be conducted by the counsel appointed by the complainant. And in that case there will be no such role to the Assistant Public Prosecutor. The other relief of giving direction to the Investigating Officer

to file affidavit with regard to aforesaid circumstances, compliance of the order made is not possible when it is held by the Department that he is at fault.

7) With these observations the proceeding is disposed of. Authenticated copy is allowed to both the sides.

Sd/-
(T.V. NALAWADE, J.)

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