

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 968 OF 2015

Mr. Yogendrakumar R. Jaiswal

... Petitioner.
(Org. Accused)

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Niranjan Mundargi i/by Randhir Singh, Advocate for the
Petitioner.

Miss Anamika Malhotra, APP for the State.

Mr. Ganesh Gole i/by Meghna Ashok Gawalani, Advocate for
Respondent No.2.

CORAM : A.V. NIRGUDE, J.

DATE : 18th DECEMBER, 2015.

P.C. :

1 Note that this writ petition is suo-motu converted into a criminal revision application. I thought I should examine correctness of the impugned order dated 13th February, 2015 passed by the learned Judicial Magistrate, First Class, Vasai at Vasai, directing the police of Vasai Police Station to further investigate into criminal case no. 584 of 2008, but in my view, having heard the submissions on behalf of the complainant and the State of Maharashtra, I have to make following observations.

2 Respondent No.2 is the complainant. He approached the court of learned Magistrate on 7th January, 2008 with a written complaint, alleging various offences punishable under various provisions of the IPC against nine persons. The gist of the complaint can be narrated as under :

3 Respondent no.2 is a wine shop owner. In February, 2007 he had a stock of liquor of about 20 lakhs stored in his wine shop. Accused Nos. 8 and 9 came to his shop some time in February, 2007 and at a gun point or at sharp weapon point they asked respondent no.2-complainant to leave the shop. Due to fear, the complainant left the shop and thereby lost control over the entire shop. He lost control over his business also. He then went to his bank from whom he had taken loan and to whom he had hypothecated the goods. He requested the bank to take over the goods and at least recover the amount of loan but the bank officers colluded with the accused nos. 7, 8 and 9 and refused to take action. On the other hand, the bank initiated civil proceedings for recovery of the unpaid loan etc. against the complainant and his guarantors. On the basis of this complaint, he alleged that the accused had committed offences such as extortion, cheating, forgery, mis-appropriation, house tress-pass etc.. The learned Magistrate ordered investigation under section 156 (3) of the Criminal Procedure Code and ultimately on 27th June, 2008, the charge-sheet was filed against accused nos. 8

and 9 only. This time the accused were charged under section 448 read with section 34 of the Indian Penal Code and all other charges were dropped. The complainant felt aggrieved and went before the higher court. He repeatedly suggested to the court that the police should be directed to investigate the case further and because of such efforts, the impugned order was passed on 13th February, 2015, directing further investigation. In my view, the impugned order is illegal and uncalled for. Fortunately, the complainant is alive and would be available for recording his deposition before the court. Hence, in view of the chargesheet filed against the accused nos. 8 and 9, a charge under section 448 read with section 34 of the Cr.P.C., would at least be framed against them. After the complainant records his deposition and if his deposition makes out a case to add more charges against the accused, such course of action is always open for the learned Magistrate. On the other hand, if investigation is ordered, it will serve no purpose. The incident took place way back in 2007. The accused were arrested once. There is no possibility of their arrest again. The police will not be able to recover weapon now which were used at the time of the incident.

4 The police would also not be able to recover stock which was stored in the shop in 2007. Obviously, the stock would have been sold altogether. I could visualize if after framing of charge, the complainant records deposition and if

it is found that stock worth Rs. 20 lakhs was taken away from the custody of the complainant forcibly, some other offence punishable under chapter 17 can be utilized. Giving such indication, the learned trial court as well as the complainant always like to put an end to this oscillation of the accused between the magistrate and the police. I would like the complainant to proceed with the case, record his evidence and take his complaint to its logical end.

5 I am also certain that by this time, the complainant must have approached the civil courts for appropriate relief against the bank and others.

6 This Criminal Revision Application is allowed. The order dated 13th February, 2015 is set aside. The learned Magistrate is directed to proceed with the trial.

(A.V. NIRGUDE, J.)

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