IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2154 OF 2015

Mahesh Vaswani } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 2288 OF 2015

Charanjeet Chanderpal and Anr. } Petitioners
versus
The State of Maharashtra and Ors. } Respondents

Mr. Mahesh Vaswani – Petitioner in person in WP/2154/2015 and Respondent in person in No. 4 in WP/2288/2015.

Mr. Charanjeet Chanderpal – Petitioner in person No. 1 in WP/2288/2015 and Respondent in person No. 3 in WP/2154/2015.

Mr. Milind M. Borkar – Petitioner in person No. 2 in WP/2288/2015 and Respondent in person No. 4 in WP/2154/2015.

Mr. Jayesh P. Yagnik-APP for State.

Mr. Farooque Ansari for Respondent No. 5.

Mr. Sudam Kale for Respondent No. 8 in WP/2288/2015 and for Respondent No. 9 in WP/2154/2015.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- SEPTEMBER 8, 2015

P.C. :-

By this Petition (WP/2154/2015), the Petitioner challenges the order passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai, copy of which is annexed to the Petition as Annexure 'A' at page 35 of the paper book. That order is passed on Miscellaneous Application No. 21/Misc./2013. By that order, the learned Additional Chief Metropolitan Magistrate has directed the Petitioner to remain present on the next date for examination under section 200 of the Code of Criminal Procedure, 1973.

2) It is contended by the Petitioner-in-person that this order passed on 17th April, 2014 is patently erroneous and illegal. The same overlooks the legal provision, namely, section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973. The contention raised requires us to refer to some facts. They are that the Miscellaneous Application was filed by the Petitioner alleging that the Court of Additional Chief Metropolitan Magistrate should take note of the fact that he is a first informant in FIR dated 5th October, 2012 now numbered as C. R. No. 172 of 2012 under section 341, 506(II), 323, 504 of the Indian Penal Code registered at Azad Maidan Police Station. That is registered against two persons, both of whom are Advocates and are impleaded as party Respondent Nos. 3 and 4 to this Writ Petition. It is stated that the Petitioner/Applicant has also been named as an accused in another FIR

of the same dated bearing C. R. No. 171 of 2012 registered at the same police station alleging offence punishable under section 324 of the Indian Penal Code. The charge sheet also has been filed therein.

3) On 2nd March, 2013, complaint case No. 101/PW/2013 was on the Board of the Metropolitan Magistrate's Court and Respondent No. 3 made an application in the said case, in response to which, the Senior Police Inspector of Azad Maidan Police Station one Deepak Dhole filed a reply/report dated 2nd March, 2013. This report was filed and the Petitioner/Applicant Advocate applied for a copy of the said police reply/report dated 2nd March, 2013. The Senior Police Inspector of Azad Maidan Police Station furnished to the Petitioner a copy of the reply/report having 14 paragraphs and dated 2nd March, 2013, which was filed by the said police station/Inspector in Case No.101/PW/2013.

4) When the Petitioner/Applicant's Advocate made an application on 5th March, 2013 seeking a certified copy of the said police reply/report, he was furnished the same, but that contained only 13 paragraphs. The Petitioner/Applicant therefore was shocked and surprised to find a complete paragraph comprising about 16 lines missing from the copy furnished by the Court of the Metropolitan Magistrate and that is why he filed an application dated 8th March, 2013 invoking Right to Information Act, 2005. On such an application being

made, he was furnished with a copy of this report by the Azad Maidan Police Station and which is containing 14 paragraphs. On comparing these two, the Petitioner noticed that there is a clear discrepancy and portions, which are vital, are missing from the report filed in the Court. It is therefore the case of the Petitioner that the Respondent Nos. 3 and 4 have committed offences punishable under sections 378, 380, 382, 383, 384, 420, 463, 464, 465, 467, 468, 469, 471, 472 and 406 of the Indian Penal Code so also amended sections 195-A, 255, 256, 201 read with sections 34, 109, 114, 120(b) of the Indian Penal Code and certain offences under the Information Technology Act, 2000.

5) The Petitioner had made this application on 30th March, 2013 and the learned Judge heard him for some time and placed the application for further arguments. On the further arguments being heard, the impugned order has been passed.

6) The Petitioner assails it essentially on the ground that once the discrepancy and difference in report, which was filed in Court and copy of which was furnished to the Petitioner, is brought to the notice of the Court, then, the ingredients of section 195(b)(ii) of the Criminao Procedure Code are satisfied and it is now for the Court to take action under section 340 of the Code of Criminal Procedure, 1973. Therefore, on such an complaint and raising such an issue, the Court could not

have called upon the Petitioner to remain present for examination under section 200 of the Code of Criminal Procedure, 1973. The Court has completely misunderstood the issue. The allegations in substance pertain to tampering with a document after it was produced in Court. If that was the position, according to the learned Judge, then, it was incumbent upon him to have proceeded in accordance with law and not treated the application, namely, Miscellaneous Application No. 21/Misc./2013 as a private complaint, invoking section 190 and 156(3) of the Code of Criminal Procedure, 1973. This is a fundamental error and therefore, the impugned order should be quashed and set aside.

7) Reliance is placed on a decision of the five Judge Bench of the Hon'ble Supreme Court of India in the case of *Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr.* reported in **(2005) 4 SCC 370**.

8) On the other hand, the contesting Respondent Nos. 3 and 4 supported the impugned order by urging that it is the specific application of the Petitioner on which this order has been passed. That application, copy of which is annexed at page 89 of the paper book Annexure 'H' is in the nature of a private complaint. The prayers of the same, if properly and completely read, would denote as to how substantive offences have been allegedly committed by these Respondents. If that is how the learned Judge has understood the

matter and therefore called upon the Petitioner to examine himself, then, the impugned order does not suffer from any illegality, infirmity, much less perversity warranting interference in the Writ Jurisdiction. The Writ Petition therefore be dismissed.

9) The Petitioner has relied upon the report that has been submitted by the Judicial Clerk one James Mamen dated 27th May, 2013, copy of which is at page 128 of the paper book Annexure 'K'. The learned Additional Chief Metropolitan Magistrate had directed the Judicial Clerk to submit his say or report in this matter.

10) We have perused that report and prior thereto, the entire complaint/Miscellaneous Application, based on which the order has been passed. We have also perused the affidavit in reply filed by the contesting Respondents. From a perusal of these materials, we do not find that the learned Judge was in any error in passing the impugned order. This is not a case where as the learned Judge has rightly understood of merely bringing to the notice of the Court the alleged tampering. There is a substantive application of the Petitioner, which alleges commission of offences and under several sections of the Indian Penal Code and the Right to Information Act, 2005. The prayers in the application *inter alia* are also to take action on this application treating it as a complaint of the Petitioner. The learned Judge therefore has

understood this matter and in our opinion *prima facie* rightly as a complaint of the Petitioner to the Criminal Court. He will have to make good his allegations.

11) During the course of our dictation of this order, the Petitioner, who appears in person invited our attention to the order passed, copy of which is at Exhibit-'Q' and prior thereto our attention was also invited to the Annexure 'I' to this Writ Petition. Annexure 'I' is the report dated 9th April, 2013. In that report, the Senior Inspector of Azad Maidan Police Station states that he has gone through the application filed by the Applicant Advocate Shri Mahesh Vaswani. After going through the papers that have been handed over at Azad Maidan Police Station by Mr. Vaswani, he observes that page three of the say filed on 2nd March, 2013 is changed after he submitted papers in the Court of Additional Chief Metropolitan Magistrate, 37th Court. In this regard, he leaves it to the Court to take action.

12) We are of the opinion that the learned Additional Chief Metropolitan Magistrate is yet to determine as to whether he should act in terms of the provisions of section 340 of the Code of Criminal Procedure, 1973 or it is a matter also alleging commission of offences as complained by the Petitioner-Applicant. We have also perused the copies of the two reports and the discrepancies pointed out to us.

13) If in the first instance the learned Additional Chief Metropolitan Magistrate feels that it would be desirable to examine the Petitioner/complainant on his complaint and thereafter consider as to whether further action in accordance with the application/complaint needs to be taken or the matter rests only on tampering with the document after it was produced in Court, then, such a course cannot be said to be impermissible in law. We do not see any prejudice to the Petitioner for the Additional Chief Metropolitan Magistrate has not made up his mind at all. He has indicated the course which he proposes to adopt and which is not found to be impermissible in law. We have also not opined ourselves, much less finally on the issue. If the Applicant/Petitioner before us is unable to point to the Court that there is *prima facie* material to hold that offences under the various sections of the Indian Penal Code and the Information Technology Act are committed, does not mean that the Court is powerless in the matter. The Criminal Court possesses adequate and enough powers in law to take note and cognizance of the tampering independently. It can take so and that course can be adopted if required, irrespective of the outcome of the examination of the Petitioner. The Petitioner objects to him being examined, as according to him, it is not a private complaint, but it is the act of tampering with the document or record filed in Court. If the document is on the file of the Court, then, only the Court must

proceed.

14) We see no reason to go into any wider aspect or controversy at this stage. Suffice it to note that the law laid down by the Hon'ble Supreme Court of India is clear. The facts apparently in that case [*Iqbal Singh Marwah* (supra)] enabled the Hon'ble Supreme Court to conclude that when the Appellants before the Hon'ble Supreme Court filed proceedings in the Court of District Judge for the grant of probate of a Will allegedly executed by the deceased brother of the Appellants, the Respondents filed a criminal complaint for prosecution of the Appellants and their mother alleging offences punishable under various sections of the Indian Penal Code *inter alia* punishing forgery. These were alleged on the ground that the said Will produced by the Appellants was forged and fictitious document. The Magistrate dismissed the complaint in view of section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973. In revision, relying upon the judgment of the Supreme Court in the case of *Sachida Nand Singh*, the learned Sessions Judge held that the bar contained in section 195(1)(b)(ii) would not apply where forgery of a document was committed before the said document was produced in Court. The High Court upheld the order of the Sessions Judge and that is how the aggrieved accused approached the Hon'ble Supreme Court. The Hon'ble Supreme Court, therefore concluded and on the ambit and scope of this provision in the

Code of Criminal Procedure that the bar created by the provision would also operate where the act is committed in relation to the document and it is subsequently produced in Court, is an enlarged interpretation and capable of great misuse. After preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue Court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one. In such circumstances, in view of the language used in section 340 of the Code of Criminal Procedure, 1973, the Court is not bound to make a complaint regarding commission of an offence referred to in section 195(1)(b), as the section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice". It shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary inquiry and record a finding to the effect that it is expedient in the interest of justice that inquiry should be made into any of the offences referred to in section 195(1)(b) of the Code of Criminal Procedure Code, 1973. The Hon'ble Supreme Court judgment would support the course adopted by the learned Chief Metropolitan Magistrate in this case. He wants to satisfy himself as to whether he should only act in terms of section 340 of the Criminal Procedure Code or only on the petitioner's complaint. When was the alleged act committed and by whom is thus crucial.

15) In such circumstances, we do not think that the provisions in the Criminal Procedure Code as to offences affecting the administration of justice being construed and interpreted in the five Judge Bench decision mandates that it is the Court which must take note of the report and document filed in Court, the alleged discrepancy and tampering in it. The Court had before it even the application containing allegations of commission of substantive offences. In these circumstances, we do not think that the preliminary order passed by the learned Additional Chief Metropolitan Magistrate contravenes the law laid down in this decision of the Hon'ble Supreme Court.

16) As a result of the above discussion, we do not find any merit in the Writ Petition. It is accordingly dismissed. In the light of the dismissal of this Writ Petition (WP/2145/2015), the other Writ Petition (WP/2288/2015) filed by Respondent Nos. 3 and 4 in the first Petition also need not be entertained and the same stands disposed off or dismissed as such. The learned Judge will have to proceed in

accordance with law.

17) In the light of our order passed today, the request made by Mr. Vaswani that he should be examined on oath expeditiously and the proceedings should not be prolonged is reasonable. We direct that the Petitioner/ Applicant shall remain present for his examination before the Trial Court on 22nd September, 2015, and the same be concluded preferably within one week thereafter.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**

<u>CERTIFICATE</u>

Certified to be true and correct copy of the original signed judgment/order.