

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.646 OF 2014

Amol Gajanan Gharat

... Petitioner

Vs.

1. Sunil Mane, Senior Police Inspector & anr. ... Respondents

Mr.Viral Rathod i/b H.E. Palwe for the Petitioner

Mr.A.R. Patil, AGP, for Respondent Nos.1 and 2

Mr.Prakash Naik i/b Pawan Mali for police officers

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 9th OCTOBER, 2015

P.C.:

1. This Contempt Petition is filed against one Mr.Sunil Mane, Senior Police Inspector, Virar police station and one Mohammed Hug, Superintendent of Police, Thane. It is the case of the petitioner that he lodged a private complaint on 18.6.2009 before the Judicial Magistrate First Class, Vasai which is numbered at C.C. No.412 of 2009 on which the learned Second Joint Judicial Magistrate First Class, Vasai gave directions u/s 156(3) of the Code of Civil Procedure on 12.10.2009 to conduct investigation in the matter. However, till today, the police did not complete the investigation and did not file report before the learned Judicial Magistrate First Class, Vasai. Hence, this Contempt Petition.

2. The learned Counsel for the Petitioner has submitted that the petitioner has filed a private complaint against one Rajesh Madhukar Deshpande and Kalpana Rajesh Deshpande for the offence of forgery as these persons had fraudulently made changes in the 7X12 extract and revenue record in respect of land owned by his father Dharma Ragho Bharat without any authority. A forged power of attorney was prepared and executed by these two persons on 26.7.2002 and thereafter, the sale deed. After notices, the State appeared and Mr.Sunil Mane, the contemnor PI, Virar police station, who is in charge of the investigation, filed affidavit in reply, wherein he tendered unconditional and unqualified apology to this Court and gave details in the affidavit mentioning that after the order of the learned Judicial Magistrate First Class on 27.10.2001, one Mr.Bhuye, Head Constable, registered crime under sections 182, 423, 465, 467, 468, 471, 474, 417 r/w 34 of the Indian Penal Code on 27.10.2009 at C.R. No.5 of 2009 at Virar police station and the police started investigation. In paragraphs 6, 7 and 8 of his affidavit, he gave names of various officers, who took charge of the case and investigated in the matter from 2009 till today. It was submitted that today also, the police want to obtain the disputed documents i.e., power of attorney and agreement of sale and want to send those documents to the handwriting expert and obtain his report to file the same before the learned Magistrate.

3. After going through the said affidavit, it was found that one Mr.Siddheshwar D. Jangam took charge of the investigation on 29.11.2014 and he is in charge of the said investigation till today. It is found that the following officers were in charge of the investigation and carried out the investigation:

- i) On 27.10.2009, Shri K.S. Bhoje, Police Head Constable, Buckle No.950, registered the Case No.5 of 2009
- ii) Shri T.B. More, Police Sub-Inspector, Virar police station, was investigating the matter from 27.10.2009
- iii) From 6.10.2010, Shri B.S. Pardeshi, police sub-inspector took over the charge
- iv) On 5.7.2012, the investigation was handed over to Shri D.F. Patil, Assistant Police Inspector
- v) On 21.12.2013, the investigation was handed over to Shri R.B. Panhale, Asstt. Police inspector
- vi) On 17.2.2014, the investigation was handed over to Shri PR. Gite, Police Sub-Inspector
- vii) On 20.3.2014, the investigation was handed over to Shri A.V. Patil, Asstt. Police Inspector
- viii) On 20.8.2014, the investigation was handed over to Shri K.S. Shinde, Asstt. Police Inspector
- ix) On 29.11.2014, the investigation was handed over to Shri Siddheshwar Jangam, Asstt. Police Inspector, who is still in charge of the matter.

4. It appears that the Investigating Officer Mr.T.B. More, PSI, Virar police station, who was in-charge of investigation for one year, recorded most of the statements. Thereafter, one B.S. Pardeshi, PSI, was in charge of the investigation nearly for two years. However, the investigation did not proceed. One Mr.D.F. Patil, PSI, was also in charge of investigation from

5.7.2012 to 28.12.2013. All these officers were called to file their affidavits as to why the police took nearly six years to comply with the order passed by the learned Judicial Magistrate First Class, Vasai.

5. I have gone through the affidavits filed by all these Investigating Officers. There is an inordinate delay in complying with the order of the learned Judicial Magistrate First Class, which is the order in respect of forgery giving directions under section 156(3) of the Code of Civil Procedure. Under such circumstances, considering the nature of the offence, it is the bounden duty of the police to complete investigation, preferably within four months, at the most latest by one year. However, in the present case, the delay is of more than six years. The learned Counsel for the petitioner relied on the judgment of **Vinay Asharam Rathi vs. M.S. Rao & Ors.**¹, where the delay in investigation and filing of the report was considered as contempt of Court and the learned Single Judge of this Court has taken a strict view that it warrants punishment for non-compliance of the said order under the Contempt of Courts Act and fine of Rs.2,000/- was imposed with imprisonment till rising of the Court. The learned Single Judge of this Court has discussed the law on this point extensively. After going through the affidavits of these officers, it is found that they have recorded the statement of one Amol, the son of the

1 2003(4) Bom.C.R. 402

complainant who has stated that the complainant and accused were interested in settling the matter. However, it was not settled. The police have also noted down that the complainant has approached them and informed that he wanted to settle and therefore they did not submit the report. Thus, on this fact, the present case is distinguishable on the point of explanation given and reason for delay in investigation. Though this delay is difficult to accept and it is definitely a disobedience, however, in order to prove contempt under the Act, the disobedience should be willful. The police officers ought not to have waited for such a long period to submit the report. The police have ample powers of investigation which are required to be used by the police and should have taken quick steps and decision while investigating the matter and should have submitted the report to the learned Magistrate.

6. Under such circumstances, I accept the apologies tendered by the contemnors and the police officers and hold that it is not a willful disobedience of the order passed by the learned Magistrate. The police are hereby directed to submit their report within six weeks from today.

7. Contempt Petition is accordingly dismissed.

(MRIDULA BHATKAR, J.)

CERTIFICATE

Certified that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.