

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4743 OF 2014

Umesh Suryanarayan Gupta Petitioner

Versus

The State of Maharashtra,
Thru' Chief Secretary, Mantralaya,
Mumbai and Ors. Respondents

Mr. Rahul Tiwari, i/by Mr. K.R. Tiwari, for the
Petitioner.

Mrs. G.P. Mulekar, A.P.P., for the
Respondent Nos.1 to 5/State.

Mr. Harshad Ponda, Sr. Advocate, with Mr.
S.R. Garud, i/by M/s. Jaykar & Partners, for
Respondent Nos.6 and 7.

Mr. Aabad Ponda, i/by M/s. Rohan Nahar,
for Respondent No.8.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 14TH AUGUST, 2015.

P.C. :

1. Heard learned counsel for the Petitioner, learned counsel
for Respondent Nos.6 to 8 and learned A.P.P. for Respondent
Nos.1 to 5.

2. Petitioner has approached this Court by way of the instant Petition mainly with a prayer to direct the Police Authorities to register F.I.R. against Respondent Nos.6 to 8 on the complaint of the Petitioner. At this stage, it may be stated that the learned counsel for the Petitioner has submitted that he is only pressing prayer clause (b) of the Petition and he is not pressing the other prayers in the Petition. Thus, this Petition is being heard only in respect of prayer clause (b), wherein directions are sought to the Police Authorities to register F.I.R. against Respondent Nos.6 to 8 on the complaint of the Petitioner.

3. The case of the Petitioner is as under :-

The Petitioner had taken one premises on leave and license basis from one Anand Dnyanu Kamble for a period of three years. According to the Petitioner, this Agreement was entered into on 1st February, 2009. Thereafter, on 1st February, 2012, the Leave and License Agreement was further extended for a period of three years. However, on 20th December, 2012, Anand Kamble expired. Thereafter the heirs of Anand Kamble started giving threats to the Petitioner to dispossess him without following due process of law. The case of the Petitioner is that the heirs of

Anand Kamble thereafter sold the premises to one Avinash Shirsat by registered Deed. Thereafter Avinash Shirsat entered into an Agreement with M/s. S.D. Corporation for redevelopment of the said property. It is noticed that the Leave and License Agreement came to an end on 1st February, 2015.

4. According to the Petitioner, Respondent Nos.6 and 7 are the partners of M/s. S.D. Corporation. This is disputed by the learned counsel for Respondent Nos.6 and 7, who stated that Respondent Nos.6 and 7 are the employees of M/s. S.D. Corporation. According to the learned counsel for the Petitioner, Respondent No.8 Ashok Sawant, though he is not an employee of M/s. S.D. Corporation or connected with M/s. S.D. Corporation, he is helping Respondent Nos.6 and 7 in their project.

5. The case of the Petitioner is that on 29th September, 2014, he was dispossessed from the premises and articles from the premises were taken away by Respondent Nos.6 to 8. However, it is an admitted fact that two days thereafter, he was given back possession of the premises by Respondent Nos.6 to 8. The learned counsel for the Petitioner states that the Petitioner was dispossessed from the premises at the behest of Respondent

Nos.6 to 8. Therefore, he filed a Civil Suit bearing Suit No.670 of 2013.

6. The grievance of the Petitioner is that though he went to the Police Station to lodge complaint in relation to the incident, which took place on 29th September, 2014, and further when he went to the Police Station to lodge complaint in relation to the continuing threats being given by Respondent Nos.6 to 8, the Police Authorities have not registered the F.I.R.

7. It is seen that the Petitioner has more efficacious remedy to approach the learned Magistrate for appropriate relief. The Magistrate has power under Section 156(3) of the Cr.P.C. to order registration of F.I.R., if deemed appropriate, or, in other words, if sufficient ground is made out for the same. In other eventuality, the Magistrate may himself proceed to inquire into the complaint and pass appropriate order. Thus, remedy before the Magistrate is more efficacious, because if the Magistrate finds sufficient cause for ordering registration of F.I.R., he would pass the order immediately on presentation of complaint, but the instant Petition would take a long time before direction for registration of F.I.R. is passed, even if a case is made out for the same. Thus, it

is apparent that the remedy before the Magistrate is more efficacious. In fact, if F.I.R. is not registered by the Police on complaint of cognizable offence being made to the police, the proper remedy to be adopted by the complainant is as set out in Section 190 r/w. Section 200 of the Cr.P.C. by filing a complaint before the Magistrate.

8. It has been held as above by the Apex Court in the case of ***Aleque Padamsee Vs. Union of India***¹. It has been further re-enforced by the following observation of the Apex Court in the case of ***Sakiri Vasu Vs. State of U.P.***² :-

"24. In view of the above mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps

¹ (2007) 6 SCC 171

² (2008) 2 SCC 409

that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. *We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternative remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by*

approaching the concerned Magistrate under Section 156(3).

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?*

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

9. In view of the aforesaid, the instant Petition is disposed of by relegating the Petitioner to appropriate remedy before the Magistrate, who shall be at liberty to pass any appropriate order, as deemed proper in the matter.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]