

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

CRIMINAL WRIT PETITION NO. 4756 OF 2014

Sandeep Appa Farad

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. P.D.Prasad Rao i/b. Hafeezur Rehman for the Petitioner.

Mr.J.P. Yagnik, APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : JULY 16, 2015.**

P.C.

1. Heard Mr. Rao, learned Counsel for the petitioner and Mr. Yagnik, learned APP for the State. The petition is filed for transfer of investigation of FIR No. I 469/ 2014 from Manpada Police Station to any other police station or investigation Agency.

2. Brief facts giving rise to the present petition are as follows:

It is the case of the petitioner that in the year 2008 he came to know that his land was being sold by somebody to one Lodha

Dwellers Pvt. Ltd. In the year 2011 he was informed by Lodha Dwellers Pvt. Ltd. that they had purchased the said land from one Ramchandra Kathavale in the year 2011. It is further case of the petitioner that on 6th January, 2012 he and his family members were compelled to execute declaration before the Sub Registrar's Office, Kalyan under which the land in question was transferred in favour of Lodha Dwellers Pvt. Ltd. It is specific case of the petitioner that the land is being grabbed illegally by said Lodha Dwellers Pvt. Ltd. He further contends that, lateron Lodha Group agreed to pay to the petitioner the price of the said land at Rs.15 crores. However, only amount of Rs.45 lakhs was paid and balance amount of Rs.14 Crores 55 lakhs was not paid. In that view of the matter the petitioner and his family members refused to hand over the possession of the said property.

3. It is also the case of the petitioner that in the month of February 2012 he was attacked by Balaram Kathavale and Sitaram Kathavale and 4-5 unknown persons and accordingly he filed FIR, and Crime No. I 28 of 2012 was registered with Hill Line Police station under

section 307 of IPC. The petitioner also alleged that he had received threats from goons of Lodha Builders to vacate his land and that he has brought the same to the notice of Commissioner of Police, Thane. Accordingly, N.C. Complaints are also registered.

4. It is alleged by the petitioner that on 19.9.2014 when he was traveling on motor bike at Umbarli village near Dombivli, four unknown persons with helmets came on two motorcycles and asked him to stop his bike, and when he stopped, one of the persons assaulted him with chopper on his back and head and the others assaulted him with fist and kicks. Those persons threatened the petitioner not to pursue his complaint against Lodha and Ors. The petitioner was hospitalized. On the same day his relative went to Manpada Police Station to lodge the FIR. However, the police refused to register the same. On 20.9.2014 the wife of the petitioner gave written complaint to the Commissioner of Police, Thane, about non registration of the offence, and only thereafter i.e. on 22.9.2014 the respondent no.3 registered the FIR bearing No.1 469 of 2014 against four unknown persons for the offence under Section 326 r/w.

34 of IPC.

5. It is the case of the petitioner that the FIR and the medical papers clearly disclose the commission of offence under Section 307 IPC, however, offence was registered only under Section 326 of IPC. According to the petitioner the manner in which the investigation was carried out by the respondent no.2 was also not proper and on the contrary he started harassing the petitioner and therefore he approached this court by filing the aforesaid writ petition for the reliefs stated therein.

6. The petition was placed for admission on 14th January, 2015. After hearing learned counsel for the petitioner and the learned APP for the State, as well as on perusing the report dated 12th January, 2015 submitted by the Police Sub Inspector, Manpada Police Station, we directed the investigation of the said FIR be supervised by some Senior Police Officer. We accordingly directed the Deputy Commissioner of Police, Zone III, Kalyan to supervise the investigation of CR.No.I 469/2014 and adjourned the matter to 28th

January, 2015.

7. The petition was again placed before this court on 16th February, 2015. Learned APP made a statement that investigation was carried out in accordance with the order dated 14th January, 2015 under the supervision of Deputy Commissioner of Police Zone III, Kalyan and accordingly affidavit would be filed. One Mr. Sanjay Jadhav, Deputy Commissioner of Police has thereafter filed affidavit dated 27th February, 2015.

8. The Deputy Commissioner, in his affidavit has stated that during investigation they have recorded the statement of as many as 6 persons, and the statements of two persons namely Suresh Patil and Vishwas Patil reveals that the petitioner has filed bogus FIR, and the injuries except the back injury suffered by the petitioner are self inflicted injuries. So far as injury on the back of the petitioner is concerned, it is submitted that the same is inflicted by Vishwas Patil by iron rod.

9. Mr. Rao, learned Counsel for the petitioner objects the manner in which the investigation is carried out. He filed affidavit of Suresh Patil and Vishwas Patil on record. These two persons are also present before us. The affidavit unequivocally shows that they were forced to give the said statement on 14th February, 2015, and immediately thereafter complaints were given to Commissioner of Police and other higher authorities.

10. Having considered the rival submissions and having gone through the compilation of the writ petition along with the affidavit of the Deputy Commissioner and the two persons, namely Suresh patil and Vishwas Patil referred above, we find merit in the petitioner's apprehension that the investigation into the FIR No. I 469/2014 is not fair.

11. At this stage we may refer to the statement made by Mr. Yagnik, learned APP that investigation is completed and report is also ready but the same is not filed in view of this petition. We made enquiry with the learned APP as to what report they propose to file before the

concerned Magistrate. Learned APP answered that they propose to file “B Summary” report.

12. Affidavit of the Deputy Commissioner states that the petitioner has filed bogus FIR in order to extract money from Lodha Dwellers. The said conclusion is arrived at on the basis of the statement of one Balaram Kathavale and Sitaram Kathavale who are the accused in the earlier FIR filed at the instance of the petitioner bearing C.R.No.I-28/14. It is alleged that Balaram Kathawale informed the police that his known person, one Bhanudas Bacchu Kalokhe told him that one Rajesh Mhatre had seen three persons accompanied with the petitioner on 19th September, 2014 at the place of the offence. Thereafter the police recorded supplementary statement of Balaram Kathavale and made enquiry with Balaram Kathavale and Rajesh Mhatre in which it was informed that petitioner was accompanied with Suresh Patil and Vishwas Patil along with their one unknown friend. On the basis of this information the police recorded statement of Suresh Patil and Vishwas Patil, in which they have stated that bogus complaint is given by the petitioner. It is alleged that the

said statements are recorded in the presence of panchas and are videographed. The affidavit also refers to the certificate given by the doctor to the effect that all the injuries suffered by the petitioner, except the injury on back are self inflicted injuries.

13. The two persons namely Suresh Patil and Vishwas Patil, as stated, have already made a representation to the Commissioner of Police and other higher authorities by letter dated 16.2.2015. Mr. Yagnik, learned APP submits that the said letter was received by the Commissioner only on 5th March, 2015. The two persons namely Suresh Patil and Vishwas Patil who filed affidavit are personally present before us. They have affirmed on oath that the statements on which the police are relying upon to come to the conclusion that the petitioner's complaint is bogus, are recorded under force, coercion and duress.

14. At this stage we do not intend to go into the statement made by Suresh Patil and Vishwas Patil under Section 161 of Cr.P.C., as well as in the affidavit filed before the court. The fact remains that their

report and two versions prima facie raises doubt about fairness of the investigation.

15. The record reveals that the petitioner was examined by the Medical Officer of Kalyan Dombivali Municipal Corporation's Bal Rukhmini Hospital, on 19.9.2014 i.e. on the date of the incident. The certificate of doctor is annexed at Exhibit I page 95. Perusal of the certificate shows that the petitioner has given history of assault by fist, kicks over the chest and upper extremities, and by chopper over back.

16. Upon examination of the petitioner by doctor following injuries were noted:

- 1) CLW about 3 x 0.5 X0.5 cm over parieto temporal region*
- 2) Oozing CLW over right forearm*
- 3) Multiple abrasions over back.*
- 4) Swelling over right parieto temporal region*

In the column “nature of injury”, the doctor has opined that the injuries are inflicted by hard and blunt object as well as by sharp and incised weapon.

17. The record further reveals that on 26th February, 2015 the Investigating Officer sought opinion of the medical officer from Bal Rukminibai Hospital as regards the nature of the weapon and whether the injury suffered by the petitioner is self-inflicted injury. The doctor, on 26th February 2015 i.e. almost after 5 months made an endorsement on this letter that except the injury on back of the petitioner, the injuries on the other part of the petitioner are self-inflicted. This opinion is given after five months of the earlier examination. The record does not reveal that the petitioner was examined by the said doctor at the time of giving second opinion. It is rather surprising that the investigating agency sought such an opinion from the doctor, and the doctor without examining the petitioner gave a conclusive opinion that the injuries sustained by the petitioner, except the back injury are self-inflicted injuries.

18. In any case, there is no explanation given for the injuries suffered by the petitioner on his back. In the complaint the petitioner has specifically alleged that the said injury was inflicted by chopper by one of the unknown persons. The doctors certificate dated 19th September, 2014 also indicates that the injury was caused by sharp weapon. According to the investigating officer the injury which the petitioner has suffered on back is caused by iron rod. This opinion is formed on the basis of the statement of Vishwas Patil who has subsequently retracted the same by filing various complaint before the higher authorities, as well as before this court.

19. Having gone through the case papers, as well as having heard learned Counsel for the petitioner, we are satisfied that the investigation in FIR No. I 469/2014 is not fair. We are therefore inclined to allow the petitioner's prayer for transfer of the investigation. Hence the order.

20. The investigation of FIR No I 469/ 2014 registered with Manpada Police Station, Dombivali, District Thane, is transferred to

Crime Branch, Mumbai.

21. The Investigating Officer shall hand over the investigation papers to the Joint Commissioner of Police, Crime Branch, Mumbai. The Joint Commissioner, Crime Branch, Mumbai, shall assign the investigation to the Senior Officer, from Crime Branch, Mumbai.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)