

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 17 OF 2016

NARAYAN S/O NABAJI MATKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Dnyaneshwar A. Bide.

APP for Respondents: Mr. S. P. Sonpawale.

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CORAM : **A. V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 28th January, 2016.

ORDER :

. The Accused in Crime No.221 of 2015, registered at Pathardi Police Station, District Ahmednagar sought quashing of the same. In addition to this, Petitioner also sought protection from Police.

2 The facts leading to this petition, in short, can be stated as under:

On 23rd June, 2015, Police registered offence against the Petitioner (Crime No.221 of 2015) for the offence punishable under Section 420 of the Indian Penal Code. The

Petitioner was arrested and was released on bail. Respondent No.3 is the Investigating Officer. His name is Mr. G. R. Hiwarkar. During investigation, he seized valuable movable articles belonging to the Petitioner. The Petitioner, therefore, sought return of those articles. On 22nd September, 2015, the learned Judicial Magistrate First Class, Pathardi partly allowed his application and directed the Police to return Petitioner's car. Despite the order, Respondent No.3 Police Officer assaulted the Petitioner and handed over the car to one Digambar Karale and Ansar Shaikh. These two persons also assaulted the Petitioner.

3 On 19th November, 2015, the Petitioner filed a criminal complaint against Respondent No.3, Digambar and Ansar. The learned JMFC directed Tophkhana Police Station, Ahmednagar to investigate into the case. Accordingly, Crime No.354 of 2015 was registered against these three persons. As per the FIR in Crime No.221 of 2015, Petitioner collected agricultural produce from various agriculturists, but misappropriated them. Because of this, several agriculturists got adversely affected. We are not inclined to examine the merit of this case mainly because the allegations made against the Petitioner are quite serious in nature and investigation

should not be hampered. We also expect that if the offence is made out against the Petitioner, the Police would file charge-sheet. It is thereafter, the Petitioner would get an opportunity to get further relief from the Trial Court. However, we were rather surprised to find that during investigation of Crime No.221 of 2015, Respondent No.3 entered Petitioner's relative's house and took away number of gold ornaments as well as a car. As per the Petitioner, this car belongs to him, though not registered in his name. We ask the learned APP to explain as to under what provisions, personal gold ornaments and car could have been seized during investigation. The learned APP tried to place reliance on Section 102 of the Code of Criminal Procedure. Section 102 reads as under:

“102. (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate

having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.”

4 By no stretch of imagination, this provision is useful for seizure of personal articles belonging to Accused and his family members. We are told that the Petitioner has already approached Revisional Court for getting the articles back. So we would not dwell on this subject also further.

5 The learned counsel for Petitioner quite earnestly sought our intervention in investigation of Crime No.354 of 2015. Allegations made by the Petitioner in his complaint, on the face of it, appear very serious. He alleged that Respondent No.3 and his companions not only took away his gold ornaments and car, but despite order of the Court did not return the car. The car thus is the subject matter of this crime. On the other hand, apparently, Respondent No.3 is trying to indicate that the car was returned to the Petitioner and he had even executed receipt on a stamp paper. In view of this controversy, the Investigating Officer of Crime No.354 of 2015 must search the car in question. It is he who can locate the car. Once he locates the car it would be clear as to whether the allegations of the Petitioner regarding the car are truthful.

6 As per the earlier order Mr. G. R. Hiwarkar, Police Sub-Inspector, Pathardi Police Station, is present before us. He has also submitted copies of the investigation papers of Crime No.221 of 2015. As per our order, even the Investigating Officer Mr.R.V.Gaikwad too presented before us investigation papers of Crime No.354 of 2015. We found that no much progress is made in

the investigation of Crime No.354 of 2015. As indicated above, the first and foremost task of the Investigating Officer is to search and find the vehicle involved. He would also collect the medical certificate showing injuries on the Petitioner's person. We are, at this stage of the view that the Investigating Officer Mr.R.V.Gaikwad is avoiding to take action against Respondent No.3, who is the principal accused in Crime No.354 of 2015. There is every possibility that the Investigating Officer would try to protect Respondent No.3, who is also a police officer. We still hope that Mr.R.V.Gaikwad would investigate into this case with all earnestness and besides finding the vehicle in question, would also take appropriate action against all accused against whom he would find evidence.

7 Looking to the seriousness of the allegations made against a police officer, we direct the Superintendent of Police to look into the investigation of Crime No.354 of 2015 and provide guidance to Mr.R.V.Gaikwad if necessary. We also direct him to take note the events that took place during the investigation of Crime No.221 of 2015. We also suggest him that if the method of investigation was found questionable, appropriate action would be

initiated. In the facts and circumstances of the case, apprehension of the Petitioner that he would be involved in new cases and would be harassed is not unfounded. Yet we are not allowing this petition because we are hopeful that the Superintendent of Police would treat the entire case riotously and fairly.

8 In terms of these directions, criminal writ petition stands disposed of.

[INDIRA K. JAIN, J.]

[A. V. NIRGUDE, J.]

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