

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2673 OF 2016

Vikrant S/o. Vishwas Deshmukh .. Applicant
and others

Versus

The State of Maharashtra and others .. Respondents

Mr.Sudarshan Salunke, Advocate for the applicant
Mr.A.R.Borulkar, APP for the respondent/ State

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.
DATED : 18.07.2016**

P.C. :-

1. This application seeks to challenge the order passed by the learned Judicial Magistrate, First Class, Ambad ordering investigation under Section 156(3) of the Criminal Procedure Code against the applicant and consequential registration of F.I.R. as Crime No.13 of 2016 with Ambad Police Station, Dist. Jalna at the instance of complaint filed by respondent No.2.

2. Background facts in short can be narrated as under:-

3. Respondent No.2 Satish is the complainant in

this case. Satish's wife filed a complaint with the Ambad Police Station alleging offence punishable under Section 498-A etc. against Satish and his family members on 23.03.2014. On 12.04.2014 Satish and others were arrested and taken into police custody. While Satish was in custody he was forced to under go certain medical tests against his wish. He was also detained for two days in police custody. On 14.04.2014 he was released on bail.

4. Being aggrieved by this alleged atrocity Satish made a complaint to Dy.S.P. on 30.05.2014 and also on 20.07.2014 but in vain. Satish therefore filed Criminal Writ Petition No. 725 of 2014. This Court disposed of this petition by its detail judgment on 9.06.2015. The operative part of the judgment reads as under:-

O R D E R

- (i) The petition is allowed with cost of Rs.20,000/- (Rupees twenty thousand)
- (ii) The respondent, State is to pay this cost to the petitioner within eight weeks from today.
- (iii) The detention of the petitioner from 3.00 p.m. of 13.04.2014 to 11.00 a.m. Of 14.04.2014 in the custody of respondent no.2 is held to be illegal, the medical examination of petitioner was also illegal and it was in violation of Article 21 and 22

(2) of the Constitution of India.

- (iv) The respondent, state do pay the compensation of Rs.2,00,000/- (Rupees two lakh) to the petitioner within eight weeks from the date of this decision. If the amount is not paid within the time fixed, the amount shall carry interest at the rate of 12% p.a.
- (v) It is necessary for the State to hold an inquiry of respondent No.2 for the aforesaid illegal detention of the petitioner and for medical examination of petitioner and such inquiry needs to be held for imposing major penalty and for the recovery of the amount which the State is made to pay in the present proceeding.
- (vi) This decision will not come in the way of petitioner to claim compensation in tort in Civil Court and also to claim compensation in Criminal Court under Section 357 of Cr.P.C.
- (vii) It is open to the petitioner to institute the proceeding in this Court for contempt of Court as laid down in the case of **Arnesh Kumar** cited supra. Rule is made absolute in aforesaid terms.

5. While deciding the above writ petition the Division Bench of this Court categorically recorded its findings that Satish [petitioner in that case] was illegally detained for two days and was subjected to

forcible undergo medical tests by Investigating Officer P.S.I.Antarap. Para (v) of the operative order directs the State of Maharashtra to hold an enquiry of P.S.I.Antarap for illegal detention and forcible medical examination etc. The Court also suggested that said P.S.I. be subjected to departmental action for imposing major penalty. The order clearly indicated that P.S.I. Antrap could also be prosecuted. The State ought to have taken true cognizance of this direction and ought to have initiated criminal prosecution of P.S.I. Antarap. Surprisingly this was not done even till today. It is surprising that though in clause (vii) of the operative part of the order the petitioner was granted liberty to initiate contempt proceeding. Respondent No.2 Satish was advised to approach Criminal Court by filing a complaint alleging offences punishable under Sections 341,342,166,167,177,193,385,109,114,120-B,500,506,34 of Indian Penal Code and under Sections 3(1)(8)(9) of the S.C. And S.T. (Prevention of Atrocities) Act, 1989 against the petitioners here and few others.

6. In view of above we think that the complaint on which impugned order was passed was a premature step. Had it been filed only against P.S.I. Antarap, even such complaint would have been a premature step. In view of the findings recorded by this Court earlier it is for the

State to decide as to whether they should prosecute P.S.I. Antarap for committing I.P.C. offences. After such decision is made sanction for prosecution would be possible under Section 197 of the Criminal Procedure Code. Admittedly whatever P.S.I. Antarap did, it was while acting in discharge of his official duties as a public servant. After such sanction is granted P.S.I. Antarap could be prosecuted. The other accused in this case are also public servants and for prosecuting them also sanction under Section 197 of the Criminal Procedure Code is a pre-requisite. Unless such sanction is secured the Court cannot take cognizance and the police cannot directly start investigation. In such situation we find that the complaint as against the present applicants deserves to be quashed.

7. In view of this the criminal application is allowed in terms of prayer clause (C) and disposed of accordingly.

[V.L.ACHLIYA, J.]

[A.V.NIRGUDE, J.]