

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

CRIMINAL WRIT PETITION NO.400 OF 2004

Manikrao Baburao Chate .. Petitioner
Age. 60 years, Occ. Retd.Dy. S.P.
R/o. Madha Colony, Mantha Road,
Jalna, Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
2. Additional Superintendent of
Police, Nanded,
Dist. Nanded.

Mr.Joydeep Chatterji, Advocate for the petitioner.
Mr.K.N. Lokhande, A.P.P. for the respondents.

CORAM : Z.A. HAQ, J.
DATED : 24.11.2016

ORAL JUDGMENT :-

. Heard. The petitioner has challenged clause (06) of the operative order passed by the learned Adhoc Additional Sessions Judge, Nanded by which it is directed that the Investigation Officer – Mr. M.B. Chate (petitioner) has to pay costs of Rs.3000/- towards compensation payable to accused Nos.1 to 6 as they are prosecuted without there being any ground for prosecution and without there being any evidence against them.

02. The learned Advocate for the petitioner has argued that the Sessions Court cannot resort to the provisions of section 250 of the Criminal Procedure Code to direct the payment of compensation by the Investigation Officer. It is submitted that the provisions of section 250 of the Criminal Procedure Code confer power on the Magistrate to direct the person on whose complaint or information prosecution is lodged/ initiated to pay the amount of compensation and such jurisdiction is not available to the Sessions Court. Apart from the fact that while exercising powers under section 250 of the Criminal Procedure Code, directions cannot be issued against the Investigation Officer, who is not the first informant, an alternate submission is made by the learned Advocate that in any case directions given by the Sessions Court are unsustainable as the mandate of sub-section (1) of section 250 of the Criminal Procedure Code requiring the Magistrate to issue Show Cause Notice before issuing directions to pay compensation has not been complied with.

03. The learned A.P.P. has fairly conceded that issuance of Show Cause Notice before issuing the directions to pay compensation is mandatory.

04. In view of the above and considering the provisions of section 250 of the Criminal Procedure Code on which the learned Adhoc Additional Sessions Judge has relied, the directions issued vide clause (06) of the operative order are unsustainable and in my view the matter is required to be remitted to the Sessions Court with directions that the Sessions Court shall issue show cause notice to the petitioner and then pass the appropriate orders in the matter, according to law. As the matter is being remanded, other point raised by the learned Advocate for the petitioner that power under section 250 of the Criminal Procedure Code cannot be exercised by the Sessions Judge, is not being adverted to and is kept open to be considered by the Sessions Court, if raised before it.

. Hence, the following order :-

(i) Clause (06) of the operative order passed by the learned Adhoc Additional Sessions Judge is quashed.

(ii) The matter is remitted to the Sessions Court for complying with the mandate of subsection (1) of section 250 of the Criminal Procedure Code and issuing show cause notice to

the petitioner calling upon his explanation in the matter.

(iii) The point raised by the petitioner that the Sessions Court has no jurisdiction to direct the payment of compensation under section 250 of the Criminal Procedure Code, is kept open to be considered by the Sessions Court, if raised before it.

(iv) It is clarified that the judgment passed by the Sessions Court acquitting the accused is not interfered with.

(v) The petitioner and the representative of the respondent shall appear before the learned Sessions Judge, Nanded on 16.01.2017 and abide by the further orders in the matter.

. The writ petition is disposed in the above terms. In the circumstances, parties to bear their own costs.

[Z.A. HAQ, J.]