

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

**CRIMINAL WRIT PETITION NO. 1485 OF 2015**

Indarchand Bhagirathram Parikh, Aged 58 **PETITIONER**  
Years, Occupation Service, Resident of  
Sahakar Nagar, Savedi, Ahmednagar

**V E R S U S**

1. The State of Maharashtra, Through **RESPONDENTS**  
Police Inspector, Police Station Tophkhana,  
Ahmednagar

2. The Superintendent of Police,  
Ahmednagar

3. Shakh Salim Maheboob Saudagar, Aged  
51 Years, Occupation Business, Resident of  
Shani Galli, Zendi Gate, Ahmednagar

*Mr. Vijay Sharma, Advocate for the Petitioner*  
*Mr. D.R. Kale, A.P.P. for Respondent Nos. 1 & 2 - State*  
*Mr. U.S. Malte, Advocate for Respondent No. 3*

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

**DATE : 13<sup>th</sup> July, 2016**

**ORAL JUDGMENT (PER : A.V. Nirgude, J.) :-**

1. Rule. Rule made returnable forthwith.
2. This petition is taken up for final hearing. Heard finally.
3. This petition seeks quashing of F.I.R./Crime No. I-317/2015, registered with Police Station Tophkhana, Ahmednagar, for the offence punishable under Sections 420, 406, 506 of the Indian Penal Code, which was registered on the basis of complaint dated 22nd October, 2015. The petitioner has also sought compensation for his alleged illegal arrest and detention.
4. ***The facts leading to this petition can be stated as under : -***

Respondent No. 3 is the complainant. On 9th January, 2015 he filed a private complaint in the Court of Chief Judicial Magistrate, Ahmednagar against the petitioner. He *inter alia* alleged in the complaint that the petitioner had cheated him etc. The learned Magistrate directed the police to conduct inquiry under Section 202 of the Code of Criminal Procedure and the police submitted a report on 7th July, 2015 exonerating the petitioner. It was observed in the report that this was a dispute of civil nature etc. While the report is still under consideration by the learned

Magistrate's Court and the private complaint filed by complainant/respondent No.3, on 22nd October, 2015 on the same allegations respondent no. 3 made complaint to the Topkhana P.S., and this time Police Officer registered Crime No. I-317/2015 for the offence punishable under Sections 420, 406, 506 of the Indian Penal Code against the petitioner. On 22nd October, 2015 the Police Officer arrested the petitioner and on the next day after about 19 hours he was produced before the learned Chief Judicial Magistrate, who on the Investigating Officer's request remanded him to police custody till 26th October, 2015, which was subsequently extended till 29<sup>th</sup> October, 2015.

5. We perused the record and proceedings of the Court of Chief Judicial Magistrate, Ahmednagar, regarding the remand application of the petitioner. We found that on 23rd October, 2015, when the petitioner was produced before the learned Chief Judicial Magistrate, his Advocate Shri S.V. Dapse intervened and filed his Vakil-patra. He also submitted certain documents for perusal of the Court. In view of this intervention, it can be presumed *prima facie* that the learned Chief Judicial Magistrate learnt about the previous complaint and the proceedings etc. which were pending before his own Court. But, the order which the learned Chief Judicial Magistrate passed on 23rd October, 2015 does not make any mention of the same. On 26th October, 2015 also the same Advocate appeared before the learned Chief Judicial Magistrate for opposing extension of police custody remand, but in-vain. On 29th October, 2015, when the Police Custody Remand came to an end, the learned Magistrate took the petitioner in his own custody. The petitioner then moved an application for bail on 29th October, 2015, but the same was rejected

mainly because the Investigating Officer as well as the complainant opposed the same. On 4<sup>th</sup> November ultimately the petitioner was released on bail due to Sessions Court's order.

6. There are two questions before us, whether the F.I.R. deserves to be quashed? Second whether in this the petitioner deserves any compensation?

7. There are two reasons for quashing the F.I.R. First because of the earlier report filed by the Police under Section 202 of the Code of Criminal Procedure and second because second complaint on the same facts and allegations was not maintainable before the police. The police could not have registered the offence, an earlier complaint is/was still pending. So, respondent no. 3 - complainant could have pursued it to its logical end. He had no reason to file a fresh complaint. Assuming he was ill-advised to do so, the police ought not to have registered the offence for the reasons mentioned above. Despite of this, certain police officers, whose names are revealed subsequently in the affidavit of the Superintendent of Police, not only arrested the petitioner, but also sought police custody remand. We find that the registration of the crime itself was an illegality. The arrest pursuant to such illegal registration of offence also an illegality and whatever happened thereafter was illegal and atrocious. Unfortunately the Chief Judicial Magistrate apparently did not interfere in the proceedings. Had he been more vigilant he would not have granted the Police Custody Remand and would have released the petitioner on personal bond instantly on 23<sup>rd</sup> itself. On the face of it, learned Chief Judicial Magistrate did not apply his mind to the facts of the case. Be that

as it may.

8. The second question is - whether the petitioner is entitled for compensation? The petitioner suffered imprisonment for 14 days between 22nd October, 2015 to 4th November, 2015. This detention apparently was result of illegal registration of offence and illegal arrest. We have no doubt in our mind that concerned police acted high handedly. The Superintendent of Police in his affidavit dated 8th March, 2016 admitted that his Officers committed a “mistake” while registering the offence and also while arresting the petitioner. He has also stated that he has initiated departmental action against the concerned police officers.

9. The question is - whether in such situation a victim is entitled to compensation and whether such compensation should be awarded while exercising the powers of this court under Art.226 of the Constitution? The answer is in affirmative.

10. The Supreme Court in the case of **Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa & Ors.**, reported in **2013 ALL SCR (O.C.C.) 36**, held that when a High Court or the Supreme Court comes to a conclusion that there is breach of fundamental right of a citizen there are at least two ways of getting victim compensated, one under Public Law and other under Private Law. The Supreme Court held that the State is vicariously liable for police atrocity such as wrongful detention and custodial death etc. In this Judgment, the Supreme Court referred its earlier judgment of *Rudul Sah v. State of Bihar* and even quoted following paras :

“ It is true that [Article 32](#) cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under [Article 32](#), this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases.....

.....The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. [Article 21](#) which guarantees

the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of [Article 21](#) secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

11. We have no doubt in our mind that the petitioner deserves compensation from the State of Maharashtra. We also protect the petitioner's right to seek compensation in private law also.

12. We cannot avoid making observations about actions of our Judicial Officer/s. It is clear from the narration above that on three

occasions the Ld. CJM apparently ignored the facts of the case. Despite of disclosure of the previous case, we are surprised, the learned Chief Judicial Magistrate did not provide adequate protection to the petitioner. At that juncture, the petitioner's advocate was available for the Magistrate's assistance. The judicial officer at that time was the only hope for the petitioner who was apparently wronged. The Ld. CJM ought to have raised to the objection. We are curious to know why he did not take required action. We can not presume that he did not know the facts and gravity of the situation. As if to add insult to the injury he even refused bail to him. This indeed was a case for bail. We need to find out why the petitioner was shabbily treated, why his legitimate right was trampled? We are constrained now to refer this case to the learned Registrar General, High Court, Bombay to place the matter for seeking appropriate order/direction of Hon'ble The Chief Justice to cause enquiry in the matter. The Registrar General shall also find out as to whether the three orders passed on 23rd October, 2015, 26th October, 2015 and 29th October, 2015 were passed by different Judicial Officers.

13. The next question is, what could be the amount of compensation. In the facts and information that has come on record regarding the status of the victim, in our opinion, the petitioner is entitled to Rs.10,00,000/- (Rupees Ten Lac) as compensation from the State of Maharashtra. We also urge the State of Maharashtra to fix liability of this amount on the concerned officers after holding appropriate enquiry. Besides this compensation, the petitioner is at liberty to file suit for compensation against the concerned persons.

14. In view of this, the petition succeeds in terms of following order :-

**ORDER**

- 1) Crime No. I-317/2015, registered with Police Station Tophkhana, Ahmednagar for the offence punishable under Sections 420, 406, 506 of the Indian Penal Code.
- 2) The State of Maharashtra shall pay compensation of Rs.10,00,000/- (Rupees Ten Lac) to the petitioner within four weeks from date of communication of order to respondents. In case of delay in disbursing the said amount to the petitioner, the State of Maharashtra shall pay interest @ 12% per annum.
- 3) Original record be sent to the Registrar General, High Court, Mumbai.

Rule made absolute accordingly.

**( V.L. ACHLIYA, J. )**

**( A.V. NIRGUDE, J. )**

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