

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

CRIMINAL WRIT PETITION NO. 435 OF 2015

Ex Lt Col R.K. Rai & Ors.

...Petitioners

vs.

Mr.Amrut Marathe & Ors.

...Respondents

Mr.R.K. Rai, Petitioner in person.

Mr.J.P. Yagnik, APP for State.

CORAM : RANJIT MORE & S.C. GUPTE, JJ.

29 JANUARY 2016

P.C. :

Heard Mr.Rai, Petitioner in person and Mr.Yagnik, learned APP for the State.

2 The Petitioner, by filing the present petition under Article 226 of the Constitution of India, is seeking following reliefs :

(a) To issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ and/or order and/or direction of this Hon'ble Court setting aside the Order dated 29 May 2013 passed by the Hon'ble Court of JMFC Nashik Road being illegal.

(b) To issue appropriate directions to the Court of JMFC Nashik Road to issue process against the accused-Respondents in view of the establishment of a prima facie case against them supported by official documents.

(c) To issue necessary direction to Respondent No.5 to initiate necessary action against the Assistant Police Commissioner Grade II, Nashik for disobeying the order dated 29 May 2013 passed by the

Hon'ble Court of JMFC Nashik Road which amounts to contempt of court.

3 The Petitioner filed a private criminal complaint, bearing No.238/2012 in the court of Judicial Magistrate, First Class, at Nashik-Road against the Respondent for the offences punishable under Sections 167, 193, 204, 217, 218, 220, 221, 500, 120B of IPC. The Petitioners and three more witnesses were examined on oath. The Magistrate thereafter passed an order on 29 May 2013 thereby directing the Assistant Commissioner of Police, Division II, Nashik to investigate the matter and submit his report within one month from the date of the order.

4 The grievance of the Petitioner seems to be that the Magistrate ought to have issued process against the Respondents under Section 204 of Cr.P.C. We are unable to accept the submission of the Petitioner in person in the light of provisions of Section 202 of the Cr.P.C. Under that provision, any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by the police officer or by such other officer as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus, in other words, Magistrate has discretion to postpone the issue of process against the accused and direct an investigation to be made by the police officer. In paragraph 2 of the order dated 29 May 2013, the learned Magistrate, having considered the nature of allegations by the Petitioner complainant, which have been described as forgery of the Government record, directed an investigation to be made by the seniors of the Respondents against whom allegations are made. This was done in order to find out whether there are sufficient grounds for proceeding against the accused. Be that as it may, order was passed on 29 May 2013 and the present petition is filed on 17 January 2015. In para 30 of the petition, the Petitioner has stated that in September 2013, he filed a Special Leave Petition (Criminal) D. No. 29003 challenging the order dated 29 May 2013 and the same was withdrawn after discussion with the Registrar (Judl.). There is no date or any particulars when this

special leave petition was withdrawn. Though the order of the learned Magistrate was passed on 24 May 2013, the Petitioner approached the Supreme Court only in the month of September 2013. Thereafter, the present petition is filed in January 2015. In the circumstances, we are of the opinion that there is delay and laches in approaching this court.

5 We asked Mr.Yagnik, learned APP, what action has been taken in pursuance of the order dated 29 May 2013 issued by the Magistrate directing ACP Nashik to investigate the matter. Mr.Yagnik, having taken instructions from the officer concerned, states that the papers concerned in the present matter are not available. He assures the court that the whatever is required to be done, would be immediately done and the order of the Magistrate would be complied with.

6 Taking into consideration the totality of the facts and circumstances of the case, we are not inclined to entertain this petition in exercise of jurisdiction of this court under Article 226 of Constitution and the same is, accordingly, dismissed.

(S.C. GUPTE, J.)

(RANJIT MORE, J.)