

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 629 OF 2016

Narendra Vishwamitra Bhatia

.....Applicant

: Versus :

1. Pushkar Tarachand Meshram
2. Sandeep Rajput
3. Haroon Gulam Mohammed Tai
(All presently lodged and detained
At Mumbai Central Prison,
Arthur Road, Mumbai.)
4. The Senior Inspector of Police
Anti Corruption Bureau, Worli,
Mumbai, C.R. No.7 of 2016
5. The State of Maharashtra

.....Respondents

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Mr. Rizwan Merchant i/by. Rizwan Merchant and Associates, Advocate for the petitioner.

Mr. Abad Ponda, Advocate i/by. Mr. Shailesh Thorat and Mr. Ashish Raghuvanshi, Advocate for respondent no.1.

Mr. Girish Kulkarni a/w. Mr. M.G. Shukla, Advocate for respondent no.2.

Mr. Madon R. Varge, Advocate for respondent no.3.

Mr. Deepak Thakare, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

15th February, 2016.

P.C. :-

1). The petitioner is the original complainant in C.R. No.7 of 2016 registered for the offences punishable under sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act and section 109 of Indian Penal Code. Respondents no.1 to 3 are accused nos.1 to 3 in the FIR and respondent no.4 is the Investigating agency. Respondent no.1, Meshram is working as the Sub-Engineer and respondent no.2, Rajput is working as Assistant Engineer with Mumbai Municipal Corporation. Respondent no.3 is the Driver of the vehicle in which Meshram and Rajput were travelling at the relevant time. The arrest of the three took place on 5th February, 2016 at 4.20 p.m. and the articles recovered at that time were, (i) Wagon-R motorcar bearing registration no.MH-04-EF-0393, (ii) four handsets of mobile, iii) a samsung tablet, iv) the amount of Rs.10,00,000/- coated with anthracin powder, v) amount of Rs.11,15,000/-, vi) a diary along with certain loose sheets and vii) 19 notices addressed to different persons under Section 488 of Mumbai Municipal Corporation Act ("M.M.C. Act" for short) amongst others.

2). The order impugned in the petition is the order dated 10th February, 2016 by which the learned Special Judge for the Prevention of Corruption Act, rejected the application of respondent no.4 for police custody and remanded respondents no.1 to 3 to judicial custody till 24th February, 2016. This petition is moved immediately on the next day i.e. on 11th February, 2016. Respondents no.1 to 3 have filed applications for bail which are pending for consideration.

3). The complaint of the petitioner stated in brief is as follows :-
. The petitioner carries on business of building construction in partnership with his son. He has constructed several buildings in the suburbs of Mumbai and also has certain ongoing projects of construction.

Section 488 MMC Act, authorizes the engineers of Mumbai Municipal Corporation to enter any premises for the purpose of inspection, taking measurements of the premises and taking photographs after due notice to the occupants and/or developers of the premises.

4). On 1st November, 2015 respondent no.1 who is working as Sub-Engineer with Mumbai Municipal Corporation in its Building and Factories Department sent notice under Section 488 of MMC Act for inspection of his office in the building of Pooja Apartments, which is more than 30 years old. On enquiries over the mobile phone, respondent no.1 informed the petitioner that he would visit the petitioner's office for discussion. Respondent no.1 did not visit the office of the petitioner and issued three more similar notices to him in respect of the premises in AB Executive Apartment, Ground Floor, Bandra (West) which was constructed 13 years back, Tirupati Building, Vallabh Road, Santacruz (West) constructed five years back and Odina Building, Central Avenue Road, Santacruz (West), where the petitioner is residing constructed 10 years back. The petitioner then again contacted respondent no.1 over telephone and received further promise of visit to the petitioner's office.

5). With passage of three months, without any move on the part of respondent no.1 in respect of the notices under the MMC Act, the petitioner suspected that the notices were only a ruse for demand of bribe from him. Therefore, on 3rd February, 2016 he complained to the Anti Corruption Bureau (A.C.B.), Mumbai Division and informed it of the proposed visit of respondent no.1 on 4th February, 2016 to his office at Pooja Apartments. A.C.B. duly recorded the complaint of the petitioner and laid trap in his office. An employee of the petitioner received a call from Mr. Rathod that, he would be visiting the petitioner in the afternoon, but he did not come. At 6.00 p.m., respondent no.1 called up to say that,

he was pre-occupied on that day and would visit on the next day between 12 noon to 12.30 p.m. He mentioned that, he had been authorised by Mr. Rathod and Mr. Nehre to discuss the issue with the petitioner.

6). On 5th February, 2016 respondent no.1 accompanied by respondent no.2 came to the office of the petitioner at 12.30 p.m. Trap had been laid at that time. All the three sat in the conference room where respondent no.1 demanded Rs.41,50,000/- for not implementing the notices. The demand was later reduced to Rs.41,00,000/- . The petitioner agreed to pay Rs.10,00,000/- within one hour and the balance amount within one week. Respondents no.1 and 2 then left, saying that, they would return after one hour. The petitioner, then arranged for the sum of Rs.10,00,000/-, the currency notes were powdered with anthracene powder, two bundles of the currency were put into an old newspaper tied with rubber band. Anthracene powder was sprinkled on the newspaper also. The newspaper bundles were then put into a polythene bag on which also anthracene powder was sprinkled. A code signal was arranged between the petitioner and respondent no.4 for indicating acceptance of the bribe amount by respondent no.1. At about 2.45 p.m., respondents no.1 and 2 came in a Wagon-R car driven by respondent no.3 and asked the employee of the petitioner, one Mr. Sawant to bring the bribe amount. When the petitioner asked them to come inside the office, respondent no.1 alone came inside. He asked the petitioner to bring the amount and walked towards the car. The petitioner and his employee, Mr. Sawant followed him with the plastic bag in which the bribe amount was kept. At the instance of respondent no.1, the amount was kept by the petitioner on the rear seat of the car. Both the respondents, then sat in the car and left only to be intercepted by the officers of A.C.B. at a short distance.

7). The respondents were arrested and the articles recovered from them under panchanama at the time of arrest were Wagon-R car with

registration No. MH-04-EF-0393, the bribe amount of Rs.10,00,000/- with anthracene powder, cash amount of Rs.11,15,000/-, 4 mobile handsets, a samsung tab, 19 notices under Section 488 MMC Act addressed to different persons, a diary with several names and numbers written therein and certain similarly written loose sheets.

8). A.C.B. conducted house search of respondent no.1. The residential flat owned by him is valued at Rs.37,00,000/-. During the search, A.C.B. recovered cash amount of Rs.20,50,000/- gold ornaments weighing 460 gms, 72 High End watches (15 male 22 female) of Limited Edition of the total value of more than Rs.1,00,00,000/- Fabia Motor Car of the value of Rs.6,00,000/- and other articles. The interior decoration of the house alongwith the electric gadgets was found to be of the value of approximately Rs.69,00,000/-.

9). On the next afternoon i.e. 6th February, 2016 respondents no.1 to 3 were produced before the Special Court for the purpose of remand and their police custody was sought for the reasons, (i) explanation for cash amount of Rs.11,15,000/- found in the motor vehicle at the time of the arrest, (ii) since the investigation was at preliminary stage, respondents were required to be interrogated to ascertain involvement of any other public servants, (iii) enquiry as regards the documents found in the vehicle, (iv) collecting voice sample of the accused, (v) the report of the house search panchanama of respondent no.1 was yet to be received, (vi) enquiry as regards the names of other officers taken by respondent no.1 during the trap process (vii) enquiry as regards the valuable articles recovered from the house search of respondent no.1 (viii) enquiry with respondent no.3 who has been working with respondent no.1 for the last 7 months. The learned Special Judge granted police custody upto 10th February, 2016.

10). On 10th February, 2016 respondents no.1 to 3 were again

produced before the Special Judge and extension of their police custody was sought for the reasons, (i) further enquiry from respondent no.1 as regards the amount found in the car at the relevant time, (ii) enquiry as regards 19 notices under Section 488 M.M.C. Act addressed to different societies and occupiers of the premises, (iii) enquiry as regards the notings made in the diary and some loose pages (iv) further enquiry as regards the transactions relating to residential premises and interior decoration of the house of respondent no.1, (v) further enquiry as regards the valuable articles recovered from the house of respondent no.1, and (vi) enquiry about the public servants from the office of respondent no.1 for their involvement in the offence.

11). The learned Special Judge, by the order impugned herein, denied custody to the police and remanded respondents no.1 to 3 to judicial custody. Since the reasons stated in the order for denial of police custody have been extensively referred to by the Counsel during their respective submissions, it would be convenient to reproduce the same, here.

“From the submissions as well as the documents it is gathered that the custodial interrogation in respect of the grievance raised in the written complaint seems to be considered by the IO. Moreover, recovery is also over. The house search of accused no.1 is also over. IO Ahire has submitted about some entries mentioned in the diary of accused no.1 but the said diary is already in the custody of IO. Moreover, he had also collected all the information regarding the amount of Rs.11,15,000/- which was found in the vehicle and he seems to be satisfied with the explanation given by accused no.1 regarding the same. The grievance is raised regarding the notices which were found in the vehicle against 19 other hotel owners, but, it seems that none of them have yet lodged any complaint with ACB and BMC also did not seem to have taken any action against the concerned hotel owners, considering all these facts and circumstances, I hold that though the grievance is raised regarding requirement of thorough investigation regarding the amount

which is found mentioned in the diary but when it is gathered from the submissions that the basic information is supplied by the accused and considering the earlier period of police custody, I am not satisfied to grant further police custody.”

12). Mr. Merchant, submits that, the order denying police custody in the facts and circumstances of the case, is grossly perverse and detrimental to the interest of the investigation. He argues that, investigation in financial offences is never easy and investigation of the present case in particular, is complex. He submits that, the diary found from the Wagon-R car, in all probabilities, contains entries of distribution of bribe amount to the tune of crores of rupees. The entries therein, consist of only names and numbers which obviously is the code language which needs to be decoded through interrogation of respondent no.1. It is his further argument that, the incident of trap, arrest by A.C.B. of the respondents and the things that have come to light, indicate involvement of other officers, junior and superior of Mumbai Municipal Corporation. According to him, certain officers of Mumbai Municipal Corporation in collusion with professional RTI activists, have been extorting money from the developers in Mumbai by issuing untenable notices under Section 488 of the MMC Act. After extorting money in this fashion, no action is taken on any of such notices.

13). Mr. Thakare, the learned APP supports the submissions of Mr. Merchant and submits in addition that, A.C.B. may also have to consider the aspects of money laundering and ultimately assist the enforcement authorities under the Prevention of Money Laundering Act, 2002.

14). Mr. Ponda, the learned Advocate appearing for respondent no.1, whose extensive submissions have been adopted on behalf of respondent no.2 and respondent no.3, has in addition to the arguments on the merits of the petition, raised preliminary objections to the

maintainability of the petition. His first preliminary objection is, to the form of the petition, i.e. resort by the petitioner to the extra-ordinary jurisdiction of this Court and the inherent jurisdiction of this Court. Relying upon the decision of this Court in ***Ambarish Rangshahi Patnigere Versus. State of Maharashtra, reported in 2011 Cr.L.J. page 515***, Mr. Ponda submits that an order rejecting the department' s application for police custody is a final order and not an interlocutory order. Therefore, the correct remedy for the petitioner was to file revision against the impugned order. Further, in view of a specific remedy made available under the Criminal Procedure Code, resort to extra-ordinary jurisdiction of this Court, is improper. He relies upon decision of the Apex Court in ***Thansingh Nathmal and Ors. Vs. A. Mazid, Superintendent of Taxes, reported in MANU/SC/0255/1964*** to support his submission that the machinery created under a statute should not be by-passed.

15). As regards the inherent jurisdiction of this Court under Section 482 Criminal Procedure Code, Mr. Ponda advances identical submissions with reliance upon the following decisions :

(i) ***Khushi Ram Versus. Hashim and Others, reported in AIR 1959 SC 542.***

(ii) ***Pampapathy Vs. State of Mysore, reported in MANU/SC/00090/1966.***

(iii) ***Madhu Limaye Vs. The State of Maharashtra, reported in MANU/SC/0103/1977.***

(iv) ***Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, reported in (2007) 12 Supreme Court Cases page 1.***

(v) ***TGN Kumar Versus. State of Kerala and Others, reported in (2011) 2 Supreme Court Cases***

page 772.

**(vi) *Gian Singh Vs. State of Punjab and Anr.*
reported in MANU/SC/0781/2012.**

It would be sufficient to note here, the observations of the Apex Court, on the subject in the last and the latest amongst the judgments cited. In *Gian Singh's* case, the three Judges Bench of the Apex Court observes :

“49. [Section 482](#) of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, ‘nothing in this Code’ which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions [of the Code](#) limits or restricts the inherent power. The guideline for exercise of such power is provided in [Section 482](#) itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that [Section 482](#) confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in [the Code](#) for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision [of the Code](#).

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under [Section 482](#) on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial

obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under [Section 482](#) of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under [Section 482](#). No precise and inflexible guidelines can also be provided.”

It is therefore to be seen, whether the facts of the case on hand, are so extra-ordinary that resort is required to be made to the extra-ordinary and inherent jurisdiction of this Court for securing the ends of justice. The argument of Mr. Merchant, in reply is that, the facts of the present case are in fact, extra-ordinary necessitating resort to the inherent jurisdiction of this Court.

16). The third preliminary objection raised by Mr. Ponda is, to the *locus-standi* of the petitioner. He submits that the petitioner as a private party, though a complainant in the concerned C.R., can have no hearing at the stage of investigation into the offence registered as the complainant does not have any vested right either into the investigation of the complaint or in conduct of the prosecution. Mr. Ponda, seeks to take

support from the decision of the Apex Court in the case of ***Sundeep Kumar Bafna Vs. State of Maharashtra & Anr, reported in 2014 of Maharashtra Law Reports Criminal page 4113***. In the facts of the decision cited, after failing in his attempt to secure anticipatory bail, the accused, had sought to surrender before the High Court to enable him to apply for regular bail. The High Court had rejected his plea for surrender before it, with an observation that, he has to surrender before the Court which can send him to remand either to police custody or magisterial custody and this can only be done under Section 163 Criminal Procedure Code and that order cannot be passed at the High Court level. In these facts of the case, the Apex Court was required to consider the role of the third party. While holding that constant and even frequent interference in the prosecution should not be encouraged by Courts as it would have deleterious effect on its impartiality, the Apex Court has observed that the complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the trial so that his interests in the prosecution are not prejudiced or jeopardised. The second decision cited on the question by Mr. Ponda, is of this very Court in ***Kishore Wadhwani and Another Vs. State of Maharashtra, reported in 2012 (5) Mh.L.J. page 252***. This Court, after referring to the provisions of Criminal Procedure Code, as also various judicial pronouncements, has held that the limited role given to the first information under sections 301 and 302 Cr.P.C. cannot be allowed to affect the authority of the Public Prosecutor or Assistant Public Prosecutor in charge of the case. The participation of the petitioner in the proceedings before the trial Court, needs to be appreciated on the background of this statement of fact.

17). The next submission of Mr. Ponda, is on the scope of a writ petition. He submits that, even if the present petition by the petitioner is

held maintainable, the relief sought by the petitioner is beyond the scope of a writ petition. This extra-ordinary power, is only supervisory and not of appellate jurisdiction. It must be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. Therefore, obviously this Court will not review the findings of fact reached by the inferior court or Tribunal even if, they be erroneous. He further submits that, a writ can be issued to correct an error of law which, in fact, is something more than a mere error. In other words, it must be one which must be manifest on the face of the record. It's manifestation must be self evident and need no examination or argument to establish it. Mr. Ponda has relied upon decisions of the Apex Court to support each of his above submissions. The list of the decision is as follows :-

- (i) ***Waryam Singh and Another Versus. Amarnath and Another, reported in 1954 SCR page 565.***
- (ii) ***Hari Vishnu Kamath Versus. Syed Ahmad Ishaque and Ors. reported in (1955) 1 SCR 1104.***
- (iii) ***Nagendra Nath Bora and Another Versus. The Commissioner of Hills Division and Appeals, Assam and Others, reported in 1958 SCR 1240.***
- (iv) ***Bathutmal Raichand Oswal Versus. Laxmibai R. Tarta and Another, reported in (1975) 1 Supreme Court Cases page 858.***
- (v) ***State of Andhra Pradesh Versus. P.V. Hanumantha Rao (Dead) Through Lrs and Another, reported in (2003) 10 Supreme Court Cases page 121.***
- (vi) ***Jasbir Singh Versus. State of Punjab, reported in (2006) 8 Supreme Court Cases page 294.***
- (vii) ***Commissioner of Income Tax and Ors. Vs.***

***Chhabil Dass Agarwal, reported in
MANU/SC/0802/2013.***

The statement of law in the decisions cited cannot be disputed and is in fact not disputed by Mr. Merchant. Therefore, no elaborate discussion thereof is needed. The petition only needs to be considered against the background of the law as stated above. Mr. Merchant, however, draws attention to the observations of the Apex Court in *Chabildas Agarwal's* case, that the Apex Court has recognised some exception to the rule of alternative remedy i.e. where statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the principles of fundamental judicial procedure.

18). On the merits of the petition, Mr. Ponda, firstly submits that the law abhors arrest and the basic rule is not to arrest. He refers to the decision of the Apex Court in ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Versus. Anupam J. Kulkarni, reported in (1992) 3 Supreme Court Cases page 141,*** wherein the Apex Court has held that detention in the police custody is generally disfavoured in law. The provisions of law lay down that, such detention can be allowed only in special circumstances and that can be only by a remand granted by a Magistrate for reasons judiciously scrutinised and for such limited purposes as the necessities of the case may require. The second decision referred to by Mr. Ponda is in ***Aslam Babalal Desai Versus. State of Maharashtra, reported in (1992) 4 Supreme Court Cases page 272*** wherein the Apex Court was considering an application for cancellation of bail on default granted under a proviso to Section 167(2) Criminal Procedure Code. In that decision, while reiterating the general disapproval for detention, the Apex Court has appreciated the needs of the investigation into crime. The Apex Court, at para-34 holds that, the object underlying the proviso is to prevent

the police of laxity in investigation and detention of the accused in police or judicial custody during investigation. It says that, the law obviously disfavours the detention of the accused in the custody of the police, but at the same time, it appreciates the power of remand during investigation as an integral part of process which is meant to be exercised to aid collection of evidence.

19). Undoubtedly, the right of personal liberty is the most valuable right for a citizen. But that right needs to be appreciated against the backdrop of the collective peaceful existence i.e. the right of the general public of peaceful existence. Hence, while recognising the right of liberty of a citizen, the law subjects the same to reasonable restrictions thereby maintaining the precious balance between the individual right and the public good. There can never be any strict rules or a straitjacket formula for the measure of that balance. It entirely depends upon the facts and circumstances of each case.

20). The argument of Mr. Merchant has been that, the Special Court has not discharged its duty while considering the application for remand by the police. It failed to appreciate the gravity of the facts constituting the offence. According to him, the steps taken by the police during the course of investigation can be known only from the notes in the case diary maintained by the police and since no case diary was either produced by the police or perused by the learned Special Judge, there was no application of mind to the facts of the case. He also argues that, the seizure of the diary alongwith some loose papers can hardly be said to be the “basic information” supplied by the accused. He submits that the diary, the notes in the diary, the 19 notices addressed to different persons under Section 488 of the M.M.C. Act are required to be and can be understood only through the mind of the accused and there cannot be any independent view taken thereof by the police.

21). Mr. Ponda, vehemently submits that, the petitioner cannot be permitted to find fault with the order of the learned Special Judge. He argues that, in the first place, the law does not require the Special Judge to give reasons for the remand. Secondly, the reasons have in fact been given by the learned Judge. As regards, the reasons to be stated for the orders under the Criminal Procedure Code, Mr. Ponda relies upon the following decisions of the Apex Court :-

(i) *U.P. Pollution Control Board Versus. Mohan Meakins Ltd. And Others, reported in (2000) 3 Supreme Court Cases page 745.*

(ii) *Kanti Bhadra Shah and Anr. Vs. The State of West Bengal, reported in MANU/SC/0004/2000, and*

(iii) *Bhushan Kumar & anr. Vs. State (NCT of Delhi) and anr. reported in MANU/SC/0297/2012.*

In *U.P. Pollution Control Board's* case and in *Bhushan Kumar's* case, the Apex Court has noted that the Legislature has stressed the need to record reasons for certain situations, such as dismissal of a complaint without issuing process. However, there is no such legal requirement imposed on a Magistrate for passing a detailed order while issuing summons. Mr. Ponda, submits that, similarly no reasons are required to be stated for framing charge against the accused. However, when the accused is required to be discharged, the same has to be for the reasons stated. In *Kanti Bhadra's* case, the Apex Court has held that, if the Court decides to frame a charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Similarly, according to Mr. Ponda, no reasons are required to be stated for refusing police custody to the ACB. Hence, the petitioner cannot be permitted to find fault with the reasons stated in the order.

22). In my considered opinion, the submission of Mr. Ponda, on the statutory requirement of reasons for the order of remand is not relevant to the issue raised in the petition. The relief sought in the petition is not limited to the challenge to the impugned order although the prayer of the petition seeks to set it aside. The issue it raises is beyond the impugned order. If the contention of the petitioner on that issue is accepted, it would certainly result into the impugned order being set aside. The issue raised in the petition would be discussed later in the order.

23). One of the submissions advanced on behalf of the petitioner is that, the Learned Special Judge did not peruse the case diary to appraise himself of the steps taken by the A.C.B. in investigation. In reply to the submission, Mr. Ponda, argues that the petitioner cannot be allowed to submit that the Learned Judge had not seen the case diary in view of the record made at para-1 of the order that he had gone through the police papers. Mr. Ponda, refers to Section 172 Cr.P.C. to submit that, the case diary is part of the police papers. Therefore, once the impugned order records that the learned Special Judge had gone through the police papers, according to him, it must be presumed that the case diary was seen by the learned Special Judge. Secondly, he submits that, presumption also needs to be raised in view of Section 114 of the Indian Evidence Act, that the learned Judge had performed his judicial act in regular manner. The third argument of Mr. Ponda, on perusal of the case diary is that, failure to peruse the case diary is not one of the grounds of challenge in the present petition. He argues that, the submission being a question of fact, unless the same is pleaded in the petition filed by the petitioner, it cannot be agitated before the Court. In support of his submission as regards the lack of pleadings, Mr. Ponda relies upon three decisions of the Apex Court in :

(1) ***Bharat Singh and others vs. State of Haryana***

reported in (1988) 4 SCC, 534.

(2) *Larsen & Toubro Ltd. vs. State of Gujarat and ors.* reported in (1998) 4 Supreme Court Cases 387

(3) *Rajasthan Pradesh Vaidya Samiti Sardarshahar and anr. vs. Union of India and ors.* reported in (2010) 12 Supreme Court Cases 609.

The decisions cited hold that, it is a settled proposition of law that, a party has to plead the case and produce sufficient evidence to substantiate the submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. Mr. Ponda, lastly argues that, the petitioner is in fact raising a dispute before this Court about what had transpired before the Special Court, when he alleges that the case diary was neither produced nor perused by the Court. Relying upon the decision of the Apex Court in ***State of Maharashtra vs. Ramdas Shrinivas Nayak and anr reported in MANU/SC/0117/1982***, he submits that such enquiry cannot be launched by this Court. It is a well settled principle that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement by affidavit or without evidence. If a party thinks that the happenings in the Court have been wrongly recorded in the judgment, it is incumbent upon the party while the matter is fresh in the mind of the Judge to call attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. Mr. Ponda argues that, therefore it was necessary for Mr. Merchant to call attention of the Learned Special Judge to the error, if any, in the order for its rectification.

24). Mr. Ponda, next submits that the impugned order of denying custody to the A.C.B. and granting judicial custody of respondents no.1 to

3 being a plausible view of the matter, does not deserve any interference by this Court. He also submits that, since the custody sought by the A.C.B. was on the second application for remand, it was necessary for the A.C.B. to point out as to how the remand granted earlier was utilised. According to him, the earlier remand of 4 days, as seen from the remand application, itself was utilized only for the purpose of calling for C.D.R. of the mobile phones of respondents no.1 and 2 and their family members and for taking sample of voice record of the respondents. If A.C.B. has wasted its time of remand, it cannot expect any further time by way of second remand. In this connection, Mr. Ponda, refers to the decision of Single Judge of this Court in ***Ajay Kisanlal Soni and another Vs. State of Maharashtra, reported in 1992 Mh.L.J. page 505*** for the following observations made therein :-

“19. Now, in the first instance, it has become imperative to make certain observations when police asks for P.C.R. P.C.R. is normally asked when some substantial fact has to be recovered or investigated into to establish nexus between the accused and the crime. It is granted only for furthering the investigation in proper direction and if no such remand is granted, there is every likelihood of the entire investigation being set at naught. It is only in this background that the Police are supposed to ask for the P.C.R., but once they ask for it, it becomes their bounden duty to attend to this investigation in preference to other problems of the Police Station. It becomes necessary for the Superior Authority in the Police Department to isolate those incharge of the investigation of crimes in which P.C.R. is asked for, from other police at Police Station. The I.O. incharge of the investigation should be asked to concentrate on the investigation of offences in which the accused are committed to P.C.R. and the Investigating Officer and other necessary skeleton staff should not be given other duties during the period of P.C.R. If the Police neglect to perform these functions and comfort with a case that the Police were busy with law and order problems, I feel that such contentions cannot be countenanced by the courts. It is the duty of the Police to investigate those cases on priority basis, wherein the

accused are committed to P.C.R. They should try to interrogate the accused as frequently as possible within the time granted by the courts and not side-track this work under the garb of law and order problems at the Police Station. These are the considerations which should be upper most in the mind of the Court. The Court should not dwell on the assumptions of guilt and thus embarrass the accused in his future defence.”

25). It is patent from the above discussion, that no stone is left unturned by Mr. Ponda to support the impugned order of denial of police custody and grant of judicial custody of the respondents. The additional argument advanced on behalf of respondents no.2 and 3 is that, the application for remand being silent as regards these respondents, the impugned order ought to be maintained as against them. Mr. Shukla, the learned Advocate appearing for respondent no.2 submits that, in a trap case, the investigation into the complaint actually gets completed after the trap is complete. I find no substance in this argument. Mr. Varge, the learned Advocate appearing for respondent no.3 submits that, respondent no.3 is only the driver of a private taxi hired by respondents no.1 and 2 and has nothing to do with the extortion of bribe. As per the remand papers, the investigation has, however, revealed that respondent no.3 is employed as a driver by respondent no.1. He therefore cannot be said to be totally unconnected to the crime as on the day.

26). As already observed earlier, the relief sought in the writ petition is not limited to the challenge to the impugned order. It is more about the appropriate opportunity to the investigating agency for correct and complete investigation into the crime reported. There cannot be two opinions on the need of the police to have free hand in investigation into the crime reported. The investigation of an offence and, in particular, investigation in financial offences is not a mechanical process. It requires, collection of material, evaluation of material, application of mind and

intellect. Therefore, it may not be possible for the investigating agency to quantify hourwise utilisation of the time of remand granted. Besides, investigative actions if pursued immediately, are likely to establish important facts, help in preservation of evidence and lead to early resolution of the investigation. From that point of view also, the police remand is significantly relevant. For these reasons, the application for remand is a matter essentially between the investigating agency and the Court. For the same reason, no order for remand can be passed in a routine or pedantic manner. The remanding Court is expected to be alive to the unique facts of each case, the gravity of the crime, its impact on the Society in general, the role assigned to the accused, complexity of the facts alleged, promptness by the police in the process of investigation and similar other factors while deciding application for remand.

27). Now the moot question to be considered is, whether the complainant/first informant and the accused have any say in matter of investigation into crime by police and what are its boundaries, if they have a say in the matter. As regards the complainant, his conventional role of reporting the crime has undergone change over the period of time. He may be permitted audience where the investigation is demonstrably bad or where there are certain repercussions for the complainant. As regards the accused, he can have no say either on the extent of remand sought and given or the utilisation of the remand by the police. The accused can only complain in the matter of excesses, which is in fact taken care of by law by prescribing the limits of police custody. In the case on hand, there is not even a whisper of any excesses on the part of the investigating agency. Therefore, in the case on hand, the respondents have no say in the nature of custody to be granted by the Court. As regards the petitioner, the petition filed by him is maintainable since in the facts and circumstances of the case, he would be concerned with the proper investigation into the

complaint. Besides, Mr. Merchant during the course of his submissions has disclosed that he has received two more similar notices.

28). Since the investigating agency must have a free hand in investigation, it will have the first say on the satisfaction with the initial investigation, the further investigation obviously depends upon the unique circumstances of crime and the material that is gathered in the initial investigation. Besides, while investigating one complaint, if the investigating agency gets leads into any larger or even other offence, the same must be investigated further and appropriate actions taken. In the case on hand, the investigating agency sought the second remand as according to it, the first remand was not of sufficient duration. In the facts of the case, it can also not be said that, there is no proper utilisation of the remand already granted. As has been rightly submitted by Mr. Merchant, the investigation in financial offences is never easy. It is obvious from the complaint and the material that has so far come on record that a substantial further investigation is required to be done. The investigation cannot be completed without understanding the diary and the entries therein. The complaint of the petitioner, specifically refers to involvement of at least two more officers of Mumbai Municipal Corporation, in the demand of bribe. The origin of 19 notices under Section 488 of M.M.C. Act is yet to be found out. Unfortunately, the learned Special Judge, without being alive to the unique facts of the case on hand, has dealt with the application of remand in a pedantic manner. The observations of the Learned Judge that basic information is supplied by the accused on the diary is indicative of non-application of mind to the facts and circumstances of the case. Therefore, the impugned order cannot be sustained.

29). The order dated 10th February, 2016 passed in C.R. No. 7 of 2016 is quashed and set aside. It is directed that, respondents no.1 to 3 be

produced before the Special Court tomorrow i.e. 16th February, 2016. The Investigation Officer shall file a fresh remand application seeking police custody for further investigation. The Special Court, shall consider the application on its own merit. Needless to mention that, the applications for bail filed by respondents no.1 to 3 shall be considered on their own merit.

(SMT. R.P. SONDURBALDOTA, J)