

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.836 OF 2015

Gajendra Vithaldas Khedekar
versus
State of Maharashtra and others

Petitioner
Respondents

Mr.S.PMunghate for Petitioner.
Mr.J.P.Yagnik, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.
DATE : 7th September 2016

PC :

1. Heard. On the complaint filed by the Petitioner, a first information report (`FIR') came to be registered being CR No.215 of 2009. A charge sheet came to be filed in 2012 for offences under Sections 420 and 34 of Indian Penal Code. The Petitioner-complainant was not satisfied with the way investigation was carried out. Therefore, an application came to be filed by the Petitioner for further investigation. By an order on the application made by the Petitioner dated 31 January 2011, the Magistrate passed an order on 10 January 2013. The order reads as under :

" ORDER :

1. *Santacruz Police Station is hereby directed to conduct further investigation as per application of complainant and trace out original missing documents and submit its report before the Court at the earliest.*

2. *Concerned police is hereby directed to conduct further investigation through senior competent officer."*

2. Consequent to the said order, Police conducted further investigation and filed a report to the Magistrate on 4/9 December 2014. The Petitioner was not satisfied with the report submitted by the investigating officer. Therefore, Petitioner filed present petition in this Court with several prayers.

3. The State filed a detailed and exhaustive affidavit-in-reply. Learned APP submits that PIL No.88 of 2010 was filed by the Petitioner and it is pending. A Notice of Motion was also filed by the Petitioner, which came to be withdrawn. Both these proceedings relate to the subject matter of present writ petition. Learned APP submitted that after thorough investigation, additional report was filed before the Magistrate and the Magistrate is seized of the matter.

4. Learned counsel for Petitioner placed reliance on AIR-2011-SC-1904 (Narmada Bai Vs. State of Gujarat and others) and AIR-2011-SC-2962 (State of Punjab Vs. Central Bureau of Investigation and others) in support of the contention that High Court in its power can direct transfer of investigation or further investigation in the matter. Learned counsel for the Petitioner submitted that police have failed to recover Rs.40 crores and have failed to carry out investigation properly. Learned counsel further submitted that investigation is required to be transferred to other agency.

5. We have perused the record placed before us, relevant documents, affidavit-in-reply of the State and judgments cited.

6. Consequent to the filing of complaint, a first information report was registered and investigation was carried out. A charge sheet came to be filed. On the application of the Petitioner, the Magistrate directed further investigation in the matter. Learned counsel for the Petitioner submitted that investigation was not carried properly. Issues are raised in the rejoinder including transfer of amount, seizure of amount and issues relating to faulty investigation.

7. In the facts of the case, we find that consequent to the order passed by the Magistrate for carrying out further investigation under Section 173(8) of the Code of Criminal Procedure, 1973, a report was submitted.

8. In the facts of the case, we expect that the Magistrate who is in-charge of the case, would scrutinize further report submitted by the police and would take appropriate decision in respect of merits of the report submitted by investigating agency. If the Magistrate is not satisfied with the report submitted, he may pass appropriate orders in accordance with law. We, therefore, keep all issues open.

9. In view of above observations and directions, we dispose of the petition.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST