

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

CRIMINAL WRIT PETITION NO. 2060 OF 2016

Alim Abu Baker Chagla

.. Petitioner

V/s.

State of Maharashtra & Ors.

.. Respondents

.....

Mr. Anirban Tripathy, Advocate for the Petitioner.
Mr. S. K. Shinde, PP a/w. Mr. J.P. Yagnik, APP for the Respondent -
State.

.....

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : OCTOBER 5, 2016.

P.C. :

Learned Public Prosecutor submits that the respondent no.5 is now present before the Court and tenders apology for her absence on the earlier dates.

2 It is the petitioner's contention that consequent to order passed by the Court under Section 156(3) of the Code of Criminal Procedure, the police ought to have registered FIR. Instead they took an entry in the station diary. Police failed to register FIR but continue to maintain stand that FIR No.M-03 of

2007 had already been registered at Loni Kalbhor Police Station. Petitioner had earlier filed a Writ Petition No.2212 of 2008. In paragraph 3 of order dated 3rd March, 2009, the Division Bench observed thus:

“3 Learned Public Prosecutor submits that the case was registered being FIR No.M/3 of 2007 and “B” Summary report has already been filed before the Magistrate. If the petitioner has any grievance with regard to investigation, he is at liberty to approach the learned Magistrate concerned with a protest petition. If any such proceedings are filed by the petitioner, that shall be disposed of by the learned Magistrate within a period of two weeks of it being filed.”

3 Petitioner filed another Writ Petition No.4011 of 2014. In paragraphs 4 and 5 of order dated 27th February, 2016, the Division Bench observed as under:

“4 In pursuance of the above order, investigation was conducted and accordingly “B” Summary report was filed before the Judicial Magistrate, First Class, Pune. Petitioner filed Protest Petition objecting the “B” Summary report submitted by the Investigating Officer. The learned Judicial Magistrate, First Class rejected the “B” Summary report filed by Loni

Kalbhor Police Station by his order dated 15th May 2009 and directed the petitioner to lead evidence. Petitioner thereafter appears to have approached this Court by filing a criminal Writ Petition No.2212 of 2008 and C.A. No.20 of 2009 in PIL No.59 of 2008. In this proceedings, the Division Bench of the High Court directed investigation into the allegations raised by the petitioner in RCC No.3967 of 2007 to be carried out under the control and supervision of the Inspector General of Police of Kolhapur Range. In pursuance of the said order of the High Court, once again the investigation into petitioner's allegations was carried out by the SDPO, Haveli Sub Division under the supervision of Inspector General of Police, Kolhapur Range and after completion of the investigation, "B" summary report was filed. By a speaking order, the Magistrate rejected the "B" summary report by making observations that he is not satisfied with the investigation and there is no point in directing the further investigation and accordingly the petitioner was directed to lead further evidence before the process.

5 Petitioner did not lead any evidence in pursuance of this order and directly approached this Court by filing the above writ petition. For the reasons mentioned hereinabove, we find that no case is made out for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution. Petition is accordingly dismissed."

4 Learned counsel appearing for petitioner submits that the officer concerned failed to register FIR in accordance with the provisions of Section 154 of the Cr.P.C. The petitioner approached this Court for directing respondent no.5 to place on record and supply a copy of FIR to petitioner.

5 Learned public prosecutor submits that as per prevailing practice, entry in the police diary was taken consequent to the order passed by the Magistrate under Section 156(3) of Cr.P.C. The station diary entry was numbered as M. Case no.3 of 007 dated 26th December, 2007 for the offences punishable under Sections 395, 341, 447, 147, 148 and 427 of the IPC. It is further submitted that the officer concerned treated the said entry as FIR and accordingly the alleged offence was investigated and summary was submitted. Learned APP further submitted that by communication dated 16th July, 2015, the respondent no.5 submitted the report addressed to the concerned Magistrate by explaining that consequent to the order passed by the Magistrate under Section 156(3) of Cr.P.C., an offence was registered in the station diary as M. Case No.3 of 2007.

6 The learned public prosecutor submits that explanation given by the officer incharge earlier and the officer present today in Court be taken into consideration and petition be disposed of accordingly.

7 We may refer to the reply dated 18th December, 2015 given by the then Superintendent of Police, Rural, Pune Dr. Jay Jadhav to the petitioner which is annexed at ***Exhibit - "S"*** to the Petition.

8 We have perused the record placed before us, considered the submissions advanced by the learned counsel appearing for respective parties. The petitioner prays for direction to respondents to hand over copy of FIR in the subject case. In the facts and considering the stand adopted by the respondent - State, we are not inclined to grant the said prayer.

9 The Writ Petition is accordingly disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)