

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

CRIMINAL WRIT PETITION NO. 4084 OF 2014

Sunil Narayan Gaikwad ... Petitioner

V/s.

The State of Maharashtra & anr. ... Respondents

Mr. K.P. Anilkumar for the petitioner.

Mrs. M.M. Deshmukhk, APP for the State.

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

1st July, 2016.

P.C.

The petitioner is a victim in a criminal case registered in Crime No. 162/2013 dated 16th August, 2013 registered in Shahapur police station for the offences punishable under Sections 307, 341 read with 34 IPC. It is petitioner's case that he suffered injuries as he was assaulted by around six persons on 16th August, 2013. He was admitted to ICU for a long time. The grievance of the petitioner is that his statement was not promptly recorded by the police. His brother tried to approach the police

but still his statement was not recorded. The investigation was initiated on the complaint filed by the one of the witnesses i.e. Chandu who was police patil of the village at relevant time. It is the contention of the petitioner that the grievance made by the petitioner in his statement recorded on 24th September, 2013 relating to assault made by six persons was not taken into consideration by the police while investigating the offence. The police patil Chandu gave an entirely different version of incident of assault made on the petitioner.

2. Learned Counsel for the petitioner submits that the persons who were involved in assaulting the petitioner were shown as witness in the chargesheet. In any case they are not likely to support the prosecution case regarding assault made by Suresh Thakare and Sharad Thakare. The petitioner's allegation regarding involvement of other accused persons other than Suresh Thakare and Sharad Thakare ought to have been investigated properly. Learned Counsel submits that Investigating Officer conducted the investigation in a partial and unfair manner which has caused serious prejudice to the petitioner. Learned Counsel submits that grievance of the petitioner was noted by the Commissioner of Region. With all these grievances the petitioner approached this Court by filing present petition in the year 2014.

3. Affidavit is filed by Mr. Sandeep Laxman Patil, Assistant Inspector of Police who was the investigating officer at the relevant time. In paras 4, 5 and last para it is stated as under:

“4. I say that again on 17.8.2013 I had gone to hospital for recording the statement of injured Sunil Gaikwad who was in Intensive Care Unit (I.C.U.) of Jupiter Hospital, Thane wherein doctor informed us that he is not in condition to give statement.

5. I say that again on 21.8.2103 I had gone to Jupiter Hospital, Thane but failed to record the statement due to treatment. Thereafter on 31.8.2013 he was discharged from the hospital. On 6.9.2013 and 12.9.2013 I visited the house of injured Sunil Gaikwad to record his statement but he refused to give the statement.

Last para (page 107): I say that the injured Sunil Gaikwad had given the statement and took the name of Suresh Thakare, Sharad Thakare and unknown three persons, Anil Shetye, Chandu Waghchoure, Bharat Thakare, Saurabh Mazi and Gautam Ahire. I say that there is no evidence against these accused persons and therefore I had not made them accused except Sharad and Suresh Thakare. I filed the charge sheet against Sharad and Suresh Thakare on 13.11.2013 u/s. 307, 341, 34 of IPC in the Court of J.M.F.C., Shahapur, Dist. Thane.

4. The petitioner filed affidavit in rejoinder. Learned APP submits that no sooner the incident took place, it was informed to police patil who in turn intimated to the police. The statement of police patil Chandu was on record on 16th August, 2013 and there is no reason to doubt the statement given by police patil and further investigation carried out by the police. The petitioner's contention regarding faulty and biased investigation has no base. It is the petitioner's apprehension that witnesses will not support his case. Learned APP submits that the investigation was carried out properly, therefore, no interference is warranted.

5. We have perused the record placed before us and considered the submissions advanced. We have perused the statement of police patil. the complaint made by police patil on 16th August, 2013, statement of petitioner recorded on 26th September, 2013, certificate issued by Jupiter hospital where according to petitioner he was admitted and other relevant documents. In the facts we find that further investigation is required. The injured person i.e. petitioner in his statement recorded on 26th September, 2013 has named more persons apart from naming actual assaultant Suresh Thakare and Sharad Thakare. Admittedly, chargesheet has been filed against those two persons for the offences punishable under Section

307, 341 read with 34 IPC. Petitioner has been insisting since then that the persons who are shown as witness in this case were also helping and assisting the assailants and they even participated in assaulting the petitioner.

6. We have gone through the communication made by the petitioner to Superintendent of Police, Rural, Thane region on 9th July, 2014 which is annexed to the rejoinder at exhibit 1. There is an endorsement of the inward clerk of Superintendent of Police, on the said representation. We are not aware as to whether Superintendent of Police has issued any instructions thereafter. Nothing is placed on record in that regard.

7. Taking into consideration over all facts, circumstances and developments which have taken place, we pass following order:

ORDER

1. The petitioner is entitled to file a representation raising specific issue on which the petitioner desires the case to be investigated further within two weeks from today. The representation shall be addressed to Superintendent of Police, Thane (Rural).

2. On receipt of said representation we direct the

Superintendent of Police, Thane region to issue appropriate instructions for further investigation in the FIR No. 162/2013. Investigation shall be carried out by Senior Police Inspector of concerned police station under supervision of Superintendent of Police. The further investigation shall be completed at the earliest preferably within eight weeks from the date of receipt of the representation. After completion of the further investigation appropriate report be submitted to the trial Court.

8. With aforesaid observations and directions, petition is disposed of. Learned APP to intimate the order to the concerned authorities forthwith.

9. All concerned to act on an authenticated copy of the order.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)