

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 862 OF 2017

Vikas s/o. Damodhar Waghmare
Age-33 years, Occ. Agril.,
R/o. Dhorjalgaon, Tq. Shevgaon,
Dist. Ahmednagar.

... **Petitioner**

Versus

1. The State of Maharashtra
Home Department,
Mantralaya, Mumbai – 32.
2. The Police Inspector,
Shevgaon Police Station,
Tq. Shevgaon, Dist. Ahmednagar.
3. The Superintendent of Police,
Ahmednagar.
4. Special Inspector General Police,
Nashik Region, Nashik.

... **Respondents**

Mr. Bhausahab S. Deshmukh, Advocate for the Petitioner.
Mrs. P.V. Diggikar, A.P.P. for the Respondent/State.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 04.10.2017
DATE OF PRONOUNCING THE JUDGMENT : 06.10.2017**

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JUDGMENT: (Per Mangesh S. Patil, J.)

. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. In this writ petition presumably under Article 226 of the Constitution of India, the petitioner is seeking following directions in prayer clause 'B':

B) "By allowing this Criminal Writ Petition, the respondent authorities may kindly be directed to decide the representations dated 26/4/2017 and 27/4/2017 made by the petitioner and transfer the investigation to C.I.D. or other appropriate agency and seeking further direction to make further investigation in the Crime no. 86/2016 registered with Police Station Shevgaon, Dist. Ahmednagar."

According to the petitioner he took treatment for Piles from one Vishwas Ravindranath Subalchandra on 15.07.2015, on his advice, by spending Rupees Seven Thousand. He underwent surgery, however, did not get any relief. He therefore approached one Dr. Bhosale at Ahmednagar and later on it was revealed to him that in fact said Vishwas Ravindranath Subalchandra is a quack. He lodged a complaint with the

respondent nos. 2 and 3, the Police Inspector of Shevgaon Police Station and the Superintendent of Police, Ahmednagar respectively on 12.08.2015 and requested them to take action against the quack. Accordingly offence was registered at Shevgoan Police Station on a complaint filed by one Dr. Manisha Narayan Hinge and in due course of time a charge-sheet has been filed before the learned Judicial Magistrate First Class. According to the petitioner, when he went through the annexures filed with the charge-sheet, it was revealed that the respondent no.2 Police Inspector has not carried out the investigation properly. His statement has not been recorded correctly. Though Dr. Bhosale has been cited as a witness neither his statement is annexed with the charge-sheet nor is the certificate issued by him. According to him, these lacuna have been intentionally left open to favour the accused. He has therefore made the aforementioned prayer.

3. It is necessary to note at this juncture that on a previous occasion after hearing both the sides this Court had passed the following order on 16.08.2017:

“We grant liberty to the petitioner to approach the Court of Judicial Magistrate, First Class, wherein the charge-sheet is presented.

2. *The learned counsel appearing for the petitioner, on instructions, submits that, the petitioner will file the appropriate application/proceedings on or before 28th August, 2017. In case such application/proceedings are filed, the Magistrate shall take decision on the said application/proceedings as expeditiously as possible and preferably within four weeks from filing such application/proceedings.*

3. *Hearing of this Petition is deferred. Stand over to 27th September, 2017.”*

4. In pursuance of such liberty the petitioner moved an application before the learned Judicial Magistrate First Class and after hearing the parties, by the order dated 25.09.2017, the learned Magistrate rejected the application seeking further investigation under Section 173(8) of the Criminal Procedure Code. It is at this stage that the matter has been heard finally. The learned Advocate for the petitioner laboured to point out as to how the investigation has been faulty and also simultaneously tried to assail the observations and the conclusion drawn by the learned Magistrate while passing the order dated 25.09.2017.

5. The learned A.P.P. by referring to the copy of the charge-sheet and the annexures, submitted that a certificate issued by Dr. Bhosale has been annexed with the charge-sheet. The learned A.P.P. also submitted that, it is the wisdom of the Investigating Officer as to the manner in which the investigation is to be carried out and what material is to be collected and sent up with the charge-sheet. This Court should not interfere sans concrete material, particularly when the learned Magistrate has applied his mind and has rejected the application of the petitioner for directions to the Investigating Officer to further investigate the crime.

6. At the cost of repetition, it is necessary to note that in fact the purpose of the writ petition stood served no sooner a liberty was granted to the petitioner to approach the Judicial Magistrate First Class who is seized of the matter and to submit appropriate application to redress his grievance sought to be made out in this writ petition. The petitioner, in pursuance of such liberty submitted an application and solicited order of the learned Magistrate. Unfortunately for him his request did not find favour with the Magistrate who has rejected the application. Bearing in mind the chronology of events, in fact we are of the strong opinion that the purpose of the writ petition stands duly

served and no further relief can be granted.

7. If at all the petitioner is aggrieved by the order passed by the learned Magistrate on 25.09.2017, he can avail suitable remedy available to him in law. However, the petitioner cannot be allowed to indirectly go into the legality or otherwise of the order passed by the Magistrate in this writ petition. In other words, in our view it would not be appropriate for this Court to go into the legality or otherwise of the order passed by the learned Magistrate in pursuance of liberty which was granted to the petitioner. Precisely, for this reason we do not see any merit in the writ petition anymore.

8. Even otherwise, it has to be borne in mind that even according to the petitioner he had approached Dr. Bhosale since he did not get any relief from the treatment/surgery performed by the accused. Thus, the only information which Dr. Bhosale could give is to corroborate the petitioner's version about having approached him for further treatment. Therefore, Dr. Bhosale cannot be said to have had any personal knowledge of the crime allegedly committed by the accused.

9. Besides, as is apparent from the papers and as has been mentioned in the police papers called for and submitted by the learned

A.P.P., a certificate issued by Dr. Bhosale is very well available in record and seems to have been forwarded along with the charge-sheet. Therefore there seems to be no substance in the submission of the learned Advocate for petitioner that the certificate issued by Dr. Bhosale has not been transmitted along with the charge-sheet.

10. Under the circumstances, we find no merit in the writ petition and it is accordingly dismissed. Rule is discharged.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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