

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1090 OF 2017

Abhay Umakant Bhangale, Age 19 years,
R/o.Swapnil Building, Plot No.118,
Gat No.49, Ganesh Colony, Jalgaon-425001.

Petitioner

versus

The State of Maharashtra
through Jalgaon City Police Station.

Respondent

Mrs.Rashmi S. Kulkarni for petitioner.
Mr.K.S.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 16th November 2017

PC :

1. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India and sought to challenge the order dated 13th July 2017 passed by Chief Judicial Magistrate, Jalgaon below Exhibit-7 in RCC No.339 of 2017.

2. The petitioner is the original complainant. Initially the complaint was filed with Jalgaon City Police Station on 29th December 2016 alleging offences under Sections 406, 415, 417, 418, 419, 420, 384, 463, 464, 465, 467, 468, 470, 471, 474, 475 of Indian Penal Code as well as Sections 203 and 201 of Indian Penal Code. The police did not take cognizance of the said complaint.

3. The petitioner forwarded a reminder letter dated 23rd January 2017 to the police. Despite that the police failed to take any action.

The petitioner therefore filed Criminal Application No.65 of 2017 before the Court of learned Chief Judicial Magistrate, Jalgaon. The learned CJM, Jalgaon vide order dated 31st January 2017 directed the concerned police station to conduct investigation under Section 156(3) of Code of Criminal Procedure, 1973. The police were directed to register first information report and forward copy of the same to the Court within seven days from the receipt of order.

4. The Court while passing the order was pleased to observe that two different sets of documents bearing the same registration number had been registered. This is impossible task which is taken place on account of fraud played by some persons. The order passed by the Civil Court also corroborate the said fact. To seize the documents which lies in the custody of the accused and third persons, it is necessary to invoke Section 156(3) of Code of Criminal Procedure, 1973. It is necessary to investigate the fraud alleged in the complaint. On the basis of said observations, the Court directed investigation under Section 156(3) of Cr.P.C.

5. In pursuant to the order dated 31st January 2017 police registered FIR vide CR No.25 of 2017 for offence punishable under Sections 406, 415, 418, 419, 420, 384, 463, 464, 465, 467, 468, 470, 471, 474, 475, 203 and 211 of Indian Penal Code.

6. The petitioner/complainant in his complaint has stated that three different sale deeds which are in two sets purported to be registered on the same registration number. The petitioner became aware of the fraud only when he came across the property extract of the property bearing No.295 in which name of accused no.2 was

entered in the ownership column. There were transactions of sale between the petitioner and the accused. However, the aforesaid property was never agreed to be sold as the petitioner himself was developing the said property. On receiving the property extract, the petitioner learnt that the property was transferred in the name of accused vide sale deed NO.2270 of 2016. The petitioner then inquired with accused no.1, who gave evasive answers and forwarded copies of three sale deeds with accused no.6. On inquiry with the office of sub-registrar, the petitioner obtained certified copies of the sale deeds wherein the document number which is distinct of each sale deed was the same as the office copy possessed by him of the sale deed. However, description of the property and the valuation were completely different. The accused no.1, his parents and the person who posed as witnesses for him had managed to get two sale deeds of two different properties registered on the same document number and same receipt number.

7. The petitioner's contention is that during the investigation the police had informed the Sub-registrar, Jalgaon that crime has been registered in connection with bogus sale deeds registered with the office of sub-registrar. The sub-registrar was informed not to effect any transaction in respect of the properties mentioned in the FIR. The said letter dated 9th March 2017 is a part of record. The police recovered certain false gift deeds in relation to the said property. It transpired that accused nos.1 and 3 transferred the property to Smt.Jyoti Kale on 28th September 2016 by way of gift deed. She is the sister of accused no.1 and daughter of accused nos.2 and 3. The statement of Smt.Jyoti Kale was recorded. In spite of being aware of the investigation, Smt.Jyoti Kale transferred one of the property to

third person vide registered sale deed No.767 of 2017. The petitioner submitted an application dated 3rd April 2017 to the police for addition of accused and penal provisions.

8. On completing the investigation the police filed charge sheet in the Court of Chief Judicial Magistrate, Jalgaon on 19th June 2017. The proceedings were numbered as RCC No.339 of 2017. The Court was yet to take cognizance of the proceedings. However, after perusal of the charge sheet, the petitioner realized that certain aspects were not investigated by police. The petitioner therefore, filed an application under Section 173(8) of Code of Criminal Procedure, 1973. In the said application it was stated that there were lapses in the investigation and it is necessary to carry out further investigation. The details as to why further investigation is necessary, were stated in the said application. The learned CJM, Jalgaon vide order dated 13th July 2017 rejected the said application. It is pertinent to note that learned APP has filed his say in respect to the said application stating that on perusal of the application and the annexures, it is apparent that the investigation on certain issues is not carried out by police and the same is required to be conducted and, therefore, appropriate order be passed by the Court. The said say was filed on 1st July 2017.

9. Learned CJM, Jalgaon in his order has observed that it is true that the investigating officer has failed to seize the agreements dated 21st March 2016, 2nd April 2016 and 17th May 2016. It is also true that the agreements were put for perusal of the witnesses. However, it must be mentioned that mere lacuna on the part of the investigating officer, further investigation is not necessary. The

investigating officer has to obtain police remand at the relevant time and required to seize the documents. He failed to do so. It was further observed that in view of the decision of Hon'ble Supreme Court in case of **Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others** ([2017]-4-SCC-177), the complainant is not entitled to file application for further investigation. In the said case all the contingencies and situations are considered and it is held that the complainant has no right to file application under Section 173(8) of Code of Criminal Procedure, 1973 seeking further investigation. The application was, therefore, rejected.

10. Learned advocate for the petitioner submitted that the learned CJM, Jalgaon has committed an error in passing the order refusing further investigation. There were lapses in investigation and it was necessary to carry out further investigation. Learned CJM has observed that no case for further investigation is made out although it was necessary to recover certain documents. It was also observed that the petitioner cannot file such an application in view of latest decision of Hon'ble Supreme Court in case of Amrutbhai Patel (supra). It is submitted that the decision in the case of Amrutbhai Patel (supra) does not preclude the petitioner from filing an application. The learned CJM Jalgaon has failed to appreciate the context in which said decision was delivered and failed to consider that Hon'ble Supreme Court was pleased to observe that after taking cognizance of the complaint, the complainant cannot make such an application. Learned advocate further submitted that the learned CJM had also committed an error while considering the application by calling upon the say of the accused which is against the settled principles of law as the accused had no say at that stage to oppose

the investigation. The right of accused accrues only after cognizance of the complaint is taken by the concerned Court.

11. Learned counsel for petitioner places reliance on following decisions, apart from the decision of Hon'ble Supreme Court referred to hereinabove :

- (ii) Dinubhai Boghabhai Solanki Vs. State of Gujarat and others (2014)4-SCC-626;
- (iii) Sakiri Vasu Vs. State of Uttar Pradesh and others (2008)2-SCC-409;
- (iv) Vinay Tyagi Vs. Irshad Ali @ Deepak and others (2013)5-SCC-762;

12. Learned APP opposed grant of any reliefs. It is submitted that no case for further investigation was made out. The petitioner-complainant has been unnecessarily delaying the proceedings. It is submitted that police had carried out thorough investigation and filed charge sheet before the competent Court. All the relevant documents were seized by police, which form part of the charge sheet. The grounds raised by the petitioner for further investigation are not sufficient to invoke Section 173(8) of Cr.P.C.. The investigating officer has filed an affidavit dated 15th September 2017 and the additional affidavit dated 19th July 2017. In the said affidavit it was stated that the investigating officer had recovered three original sale deeds from the office of Joint Sub-registrar, Jalgaon. he has also recovered all other relevant documents referred to in the said affidavit. It is submitted that on completing the investigation, the charge sheet is filed along with all the relevant documents and no case for further investigation was made out. In

the additional affidavit it was stated that original sale deeds bearing Dast No.2079 of 2016 and Dast No.2770 of 2016 were seized on 5th April 2017 from the accused Nilesh Bhangale during his police custody. It is further stated that during police custody of accused Nilesh Bhangale it was revealed that original sale deed bearing Dast No.2770 of 2016 was snatched by the complainant-petitioner. It was also revealed from the statement of the accused that Dast No.2770 of 2016 which was the original sale deed, was taken away by the present petitioner and, therefore, it should not be recovered from the accused. It is also stated that sale deeds which were recovered were forwarded to handwriting expert vide letter dated 5th June 2017. It is, therefore, stated that case for further investigation was not made out.

13. I have gone through the documents which are placed on record. The petitioner is the original complainant who filed a private complaint seeking investigation under Section 156(3) of Cr.PC.. Prior to that the petitioner has filed a complaint to the police, cognizance of which was not taken by them in spite of reminder forwarded by the petitioner. The learned CJM, Jalgaon directed investigation under Section 156(3) of Cr.PC.. The need for police investigation is reflected in the order dated 31st January 2017. The police conducted investigation and filed charge sheet. The petitioner forwarded letter dated 3rd April 2017 to investigating officer and pointed out that during the course of investigation, the accused nos.1 to 3 have used the fabricated documents and executed illegal transactions. After receiving the said information the police had issued a letter dated 9th March 2017 to sub-registrar stating that in the event any person visits the said office for registration of

documents in relation to subject properties, the intimation be provided to police and the persons be sent to police station for investigation. The police had also recorded statement of Smt.Jyoti Kale on 28th March 2017. In spite of knowledge of aforesaid FIR and circumstances, Smt.Kale and others namely Chandrakant Chowdhari, Sanjay Ranve, Nitin Ranve acted in connivance with officers/staff from the office of sub-registrar and executed false documents bearing Dast registration No.707 of 2017. It was pointed out that all of them are involved in commission of crime and, therefore, additional penal provisions be involved and the said persons be impleaded as accused. The Trial Court was yet to take cognizance of the police report. Prior to that the petitioner filed an application seeking further investigation on account of certain lapses and/or non recovery of certain documents which are necessary to establish the charges against the accused. The learned CJM has rejected the application on the ground that merely because certain documents are required, issuance of directions under Section 173(8) of the Cr.P.C are not warranted and that the petitioner being the complainant has no locus to file application under Section 173(8) of Cr.P.C.. Learned CJM has relied upon the decision of Hon'ble Supreme Court in case of Amrutbhai Patel (supra) while rejecting the application on the ground of locus of the petitioner in filing the application. Learned APP filed his say and supported the application stating that there are lapses in the investigation and further investigation is required in the case.

14. From the grounds raised by the petitioner seeking further investigation, it appears that the petitioner is seeking further investigation more particularly in the circumstances mentioned in

paragraph 11 of this petition. It is contended that police have not investigated the aspect of transferring the property by Smt.Jyoti Kale to Chandrakant Chaudhari, Sanjay Ranve and Nitin Ranve. The statement of Smt.Jyoti Kale was recorded on 28th March 2017 which is the date prior to the registration of the sale deed. It is contended that Smt.Jyoti Kale appears to have destroyed the evidence collected against her brother and parents. Though the office of the sub-registrar, Jalgaon was informed vide letter dated 9th March 2017 about agreements and the crime and was restrained from transferring the property, the said department allowed registration of the sale deed numbered as 767 of 2017 on 29th March 2017. The supplementary statement of the petitioner was recorded on 7th April 2017 wherein he produced certain documents in relation to the agreement to sale of property. The said agreement was prepared by accused no.1 and signed by petitioner no.1 as witness since property belongs to his father. The seized document bearing signature of petitioner's father has been forged by the accused. The documents are apparently signed by Pramod Kale as witness. He has admitted in his statement that he put in his signature on the said agreement in the capacity as witness. In January-2017 although the agreement is of 2016, the petitioner has handed over the photocopy of the agreement to sale prepared by accused no.1 wherein the petitioner has signed as witness since his father was not present at that time. The said agreement to sale was handed over on 7th April 2017. The police did not include the said document in the charge sheet and even the written request dated 3rd April 2017 also does not form part of the charge sheet. It is also contended that during investigation the statement of one Sharad Sapkal was recorded on 2nd May 2017. In his statement he stated that the accused no.1 has filed a false case against the petitioner bearing Crime No.177 of 2016.

15. The petitioner's submission is that the accused and other persons who were not impleaded as accused, were required to be investigated by police. The accused with the help of others prepared three false sale deeds. Those sale deeds were supplemented with three bogus receipts. The accused had forged the signature of the informant. The accused then transferred the properties to their family members in the nature of gift deeds. The statements of persons who helped them to prepare the false documents were recorded. The police ought to have investigated the roles of other persons. The learned CJM, Jalgaon while rejecting the application has observed that the office of sub-registrar has transferred the property in the name of Smt.Jyoti Kale by gift deed inadvertently. The Court further observed that the statement of Sharad Sapkale recorded in investigation of CR NO.177 of 2006 is not admissible in evidence. Both the crimes are registered independently. They need to be investigated thoroughly. Mere fact that recording of statement of Sharad Sapkale in the criminal case, is not the sole ground to discard the investigation which is going on in CR No.177 of 2016. Apparently learned CJM, Jalgaon has committed an error in making the said observations as petitioner was certainly not seeking quashing the proceedings in CR No.177 of 2017. The statement of Sharad Sapkale bears importance since it is the case of the accused and even the investigating officer, which is evident from the affidavit-in-reply, that one of the important document could not be recovered as the complaint was lodged against the petitioner that he snatched away the said document. It appears, the police have accepted the said fact as a gospel truth in spite of statement of Sharad Sapkale. In the circumstances it is apparent that further investigation ought to have been conducted by police.

16. The petitioner in his complaint has alleged that the accused no.1 gave office copies of the sale deeds. The same are not recovered till date. The petitioner has submitted that while opposing the application for anticipatory bail filed by the accused, the investigating officer had given the same as a ground for rejecting the application. The original copies of Annexure-II as well as original copies of sale deeds are also not recovered and the Sale Deed No.2770 of 2016 is also yet to be recovered. The petitioner had also contended that the copies of forged sale deeds are recovered from the office of sub-registrar, however, in order to prove that the said sale deeds are forged, it is necessary to recover the original sale deeds which were intended to be executed between the parties from which the forged one are created. It is also contended that there was no investigation in respect of forged agreements to sale, which were prepared by accused no.1 in respect of properties which were agreed to be sold. It is also contended that there is no investigation in respect of offences under Sections 203 and 211 of Indian Penal Code and the role played by other persons in that regard. The affidavits filed by respondents indicate that several documents are recovered and the contentions of petitioner are not true. Apart from documents, it is pointed out by the petitioner that police had recorded statement of Pramod Kale. It is stated that his complicity is reflected but he is not arraigned as accused. His statement forms part of charge sheet. He is the brother-in-law of accused no.1. It is submitted that he had admitted that though documents are purported to be of 2016, he has signed them in January-2017. The petitioner further relies on the fact that some of the persons including Smt.Jyoti Kale has destroyed the evidence and yet they are

not charged with any offence. The aspect of help from other sources and their complicity in the crime is not investigated.

17. In the case of Amrutbhai Patel (supra), the Hon'ble Supreme Court has observed that on an overall survey of the pronouncements of the Supreme Court on the scope and purport of Section 173(8) of Cr.P.C and the consistent trend of explication thereof, though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand. It was further observed that in contra-distinction Sections 156, 190, 200, 202 and 204 Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge etc. Though the Magistrate has power to investigate under Section 156(3) at the pre-cognizance stage, even after charge sheet or closure report is submitted, once the cognizance is taken and the accused appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. In the said

case the trial had proceeded, the witnesses were examined and thereafter at the stage of recording the statements under Section 313 of Cr.P.C, the application for further investigation was made at the instance of first informant. The investigation was conducted by police. It was not a case of investigation under Section 156(3) of Cr.P.C. The Court, therefore, observed that in such eventuality, only the prosecution can make application for further investigation under Section 173(8) of Cr.P.C. No such power is available to the Court after cognizance has been taken on the basis of earlier report, process has been issued and accused have appeared. At that stage the Magistrate, suo motu and not on application by the complainant/informant, can direct further investigation. This indicate prior to taking cognizance. The informant/complainant can file such application. Apart from that, paragraph 51 of the judgment states that Magistrate has power to direct investigation under Section 156(3) at pre-cognizance stage even after charge sheet or a closure report is submitted. Once cognizance is taken, he is incompetent to direct investigation either suo motu or on prayer by complainant/informant. The Trial Court has misconstrued the observations of the said judgment and rejected the application. In the present case the Court had not taken cognizance of report under Section 173 of Cr.P.C. This Court vide order dated 16th August 2017 directed the Trial Court to defer passing of order of cognizance, which interim order was continued further.

18. In another decision of Hon'ble Supreme Court in case of Sakiri Vasu (supra), it was observed that Section 156(3) of Cr.P.C is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and it includes the

power to order registration of an FIR and of ordering proper investigation, if the Magistrate is satisfied that proper investigation has not been done or is not being done by police. Section 156(3) of Cr.P.C, though briefly worded, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation. It was also observed that when a power is given to an authority to do something, it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution. In paragraph 24 of the decision it was reiterated that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C, we are of the opinion that they are implied in the above provision.

19. In case of Dinubhai Boghabhai Solanki (supra), the Hon'ble Supreme Court has observed that it is not necessary to give an opportunity of hearing to the proposed accused as a matter of course. If prior notice and an opportunity of hearing has to be given to the accused, it would frustrate the entire object of effective investigation.

20. In the light of the decision in the case of Amrutbhai Patel (supra) and Sakiri Vasu (supra) and the observations made therein and considering the grounds raised by the petitioner for further investigation, it would have been appropriate to allow the application filed by the petitioner seeking further investigation. The Trial Court has, therefore, committed an error in rejecting the said application. In pursuant to the order of further investigation, it is expected that police would conduct the same in accordance with law.

21. Hence, I pass following order :

ORDER

- (i) Writ Petition No.1090 of 2017 is allowed;
- (ii) The order dated 13th July 2017 passed by the Chief Judicial Magistrate, Jalgaon below Exhibit-7 in Regular Criminal Case No.339 of 2017 is quashed and set aside;
- (iii) The application below Exhibit-7 in RCC No.339 of 2017 is allowed and the Chief Judicial Magistrate, Jalgaon is directed to issue appropriate directions in accordance with law;
- (iv) The investigating machinery shall carry out further investigation in accordance with law;
- (v) Criminal Writ Petition No.1090 of 2017 is disposed of.

(PRAKASH D. NAIK, J.)

MST