

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

CRIMINAL WRIT PETITION NO. 845 OF 2010

Gajendrasingh s/o Sundarsingh Shahu,
Age 28 years, Occu. Education,
R/o Badpura, Gurudwara, Gate No.3,
Nanded

.. Petitioner

Versus

1. The State of Maharashtra,
through Vazirabad police station,
Nanded
2. The Superintendent of Police,
Nanded, Taluka and District Nanded
3. M.M. Syed,
Age Major, Occu. Service,
(Head Constable B.No. 569),
R/o Vazirabad Police Station,
Nanded
4. Rajendrasingh s/o Darbarsingh Patre,
Age Major, Occu. Service,
R/o Alipur Police S.T.D., Delhi
5. Ramsingh Devasingh Ramgadiya,
Age Major, Occu. Service,
R/o Badpura, Gurudwara Gate No.3,
Nanded, Taluka and District Nanded
6. Deepsingh Jeevansingh Shahu,
Age major, Occu. Nil,
R/o Badpura, Gurudwara Gate No.3,
Nanded, Taluka and District Nanded

..Respondents

Mr M.V. Ghatge, Advocate h/f Mr B.N. Gadegaonkar, Advocate for
petitioner

Mr P.G. Borade, A.P.P. for respondents no.1 to 3

**CORAM : T.V. NALAWADE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING THE
JUDGMENT : 10.10.2017**

**DATE OF PRONOUNCING
THE JUDGMENT: 01.11.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. This is petition under Article 226 of the Constitution. The petitioner, vide prayer clause (A) seeks quashing of charge-sheet No.103 of 2010 submitted before the learned Chief Judicial Magistrate, Nanded in respect of F.I.R. No.128/2010 dated 3.6.2010, registered at Vajirabad Police Station, Nanded and directions for re-investigation in the matter.

2. Vide prayer clause (B), petitioner seeks directions to respondents no.1 and 2 to initiate enquiry against respondent no.3 for manipulation of the record in the investigation of above referred case.

3. The facts relevant for deciding the present petition may be stated as follows :

4. the petitioner Gajendrasingh filed the above referred F.I.R. at Vajirabad Police on 3.6.2010 to the effect that on 2.6.2010 at 11.00 a.m., he was standing in front of his house by the side of road. That time, respondent no.4 Rajendrasingh, respondent no.5 Ramsingh and respondent no.6 Deepsingh were standing by his side. That time, accused Jagbirsingh came to the spot in a gypsy and started abusing him. That time, respondent no.6 Deepsingh pressed and held the petitioner and Jagbirsingh and respondent no.4 Rajendrasingh inflicted three to four blows of sword on his right hand. He was rescued by one Gabbar and was admitted in civil hospital at Nanded. On the basis of the F.I.R., crime was registered under Sections 323, 324, 504 read with Sec.34 of Indian Penal Code at Vajirabad Police Station, Nanded

at C.R.No.128/2010 and was investigated into. The petitioner filed application on the same day to register crime under Section 307 of Indian Penal Code. After four days, on 7.6.2010, the petitioner wrote letter to the Superintendent of Police, Nanded that he had received serious injuries on his hands by blows of sword but the Police have recorded the crime for minor offences and that too only against accused no.1 Jagbirsingh. The Police were trying to protect the other accused and other accused were intimidating him and his family members with threats of killing and falsely implicating in other cases. Therefore, offence under Section 307 of Indian Penal Code should be recorded against all. The F.I.R. was registered by respondent no.3 Head Constable M.M. Syed. He also recorded statements of brothers of the informant by name Sachendrasingh and Rajendrasingh and Basantsingh alias Gabbarsingh. In all the statements, it was shown that Jagbirsingh alone inflicted sword blows on Gajendrasingh. The statement of Shailendrasingh was also recorded by respondent no.3. He has no personal knowledge, but according to him, he received knowledge from Rajendrasingh which is as per the statements recorded of Rajendrasingh and Sachendrasingh. Medical certificate shows one multiple incised wound on right forearm size 4 cm x 2 cm. Accordingly, respondent no.3 has filed charge-sheet only against Jagbirsingh.

5. According to the petitioner, Head Constable Syed has wrongly recorded the statements of the witnesses. Rajendrasingh and Sachendrasingh have filed affidavit stating that their statements were not recorded by Head Constable Syed and their signatures were taken

on blank papers. They had disclosed the assault on Gajendasingh by four persons.

6. Respondent no.3 Head Constable Syed has filed his affidavit-in-reply. He has stated that he had recorded the statements of the witnesses as deposed by them. According to him, the investigation revealed that the names of Rajendrasingh, Deep Singh and Ramsingh were wrongly entered by the informant, the informant Gajendrasingh had received only one injury and there was civil dispute between the parties. As per the material collected, the charge-sheet is filed only against Jagbirsingh for the offences punishable under Sections 324, 323, 504 read with Sec.34 of Indian Penal Code and Sections 4 and 5 of Arms Act.

7. Heard the learned Advocate Mr M.V. Ghatge, holding for Mr B.N. Gadegaonkar, Advocate for the petitioner and learned A.P.P. Mr P.G. Borade for the State. Respondents no.4 to 6 though served, did not file appearance.

8. Mr Ghatge, learned Counsel for the petitioner argued that when the F.I.R. discloses names of four accused persons, the Investigating Officer was bound to submit report under Section 173 Cr.P.C. against all the accused persons, either of sufficient evidence or deficient evidence. It is not permissible for the Investigating Officer to pick and choose the accused persons and file charge-sheet against one accused and submit no report against the remaining accused.

9. Per contra, learned A.P.P. relied on Section 157 (I) (b) of Cr.P.C. to submit that the Investigating Officer has discretion not to enter into investigation in respect of some of the accused against whom there is no material. Mr Ghatge has also pointed out that in case the Investigating Officer decides not to investigate, he should not investigate the crime at all. He cannot exercise his discretion only against some of the accused persons. Besides, he has to notify his decision under Section 157 (1) (b) to the informant as per Section 157 (2) of Cr.P.C, which was not done.

10. The points for our consideration with our findings are as follows:

(I) Whether the Investigating Officer is bound to submit report under Section 173 Cr.P.C. of either sufficient evidence or deficient evidence once the names of the accused persons are disclosed in the investigation papers ?

..In the affirmative

(II) Does investigation conducted by respondent no.3 deserves to be quashed and fresh directions are necessary for re-investigation ?

.. Investigation needs no quashing.

Direction to Police Station in-charge to get the investigation carried out against respondents no.4 to 6 and submit report under Section 173, Cr.P.C.

(III) Whether it is necessary to direct enquiry against respondent no.3 for willfully shielding the accused persons ?

.. In the negative

REASONS

11. In the present case, the F.I.R. shows that the respondents no.4 to 6 had participated in the incident of assault. It is alleged in the F.I.R. that Deepsingh (respondent no.6) and Ramsingh (respondent no.5) had pressed and caught hold of the informant Gajendrasingh while Jagbirsingh and Rajendrasingh (respondent no.4) have inflicted blows of sword on his right hand. Respondent no.3 has conducted investigation. It reveals that the informant has received only one injury on his right hand. Some statements recorded by respondent no.3 disclose role to only Jagbirsingh, but as per affidavit filed by brothers of the petitioner, namely Rajendrasingh and Sachendrasingh, their statements were not properly recorded.

12. It is pertinent to note that the charge-sheet is submitted only against Jagbirsingh whereas F.I.R. disclosed names of four accused persons namely Deepsingh, Rajendrasingh, Ramsingh and Jagbirsingh.

13. Section 157 (1) (b) of Cr.P.C. reads as follows :

“157 (1) (b) - If it appears to the office in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.”

On plain reading of the provision, it is clear that if the Officer in charge of the police station is of the opinion that there is no sufficient ground for entering on an investigation, he should not investigate the case. This provision gives discretion to the Office in charge of the police station for taking a decision for not investigating the case. It does not give any discretion to investigate only against some persons and not to investigate against other persons.

14. It is obvious that when the case is under investigation, the Investigating Officer shall have no control as to what material will be collected and against whom. If the witnesses are going to give statements against four persons or there is other material against four persons, the Investigating Officer has no power to collect and accept the oral and documentary material against some of the accused and to discard material against other accused. He has to record the statements of all the concerned persons and has to fairly investigate the crime to find out the truth, which is unknown to him. He cannot proceed with the investigation on presumption that some accused persons are innocent and material is only against some accused persons.

15. Indeed, if the investigation discloses no material against some of the accused persons, he has discretion to submit report under Section 169 of Cr.P.C. In fact, Section 169 Cr.P.C. authorises him to release any accused person against whom there is no sufficient material to release him on executing bond with or without surety irrespective of gravity of offence. Section 169 Cr.P.C. relates to his

decision to release such accused on bail, which is required to be intimated to the Magistrate.

16. Section 169 Cr.P.C. does not deal with the steps to be taken on completion of investigation. On completion of investigation, the Investigating Officer is bound to submit report under Section 173 of Cr.P.C. On carefully going through the provisions of Section 173 Cr.P.C., it is evident that Section 173 (2) of Cr.P.C. speaks generally about the submission of the report, whereas Section 173 (5) speaks about submission of report in cases to which Section 170 Cr.P.C. applies. Section 170 of Cr.P.C. applies to the cases where there is sufficient evidence.

17. In **Abhinandan Jha and ors. Vs. Dinesh Mishra, AIR 1968 SC 117**, while considering the scope of investigation and the powers of the Investigating Officer, in paragraph 9 it is observed :

“9. If, on investigation, it appears to the officer in charge of a police station, or to the officer making an investigation, that there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate. Section 169 says that the officer shall release the accused, if in custody, on his executing a bond to appear before the Magistrate. Similarly, if on the other hand, it appears to the officer making the investigation under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is required, under Section 170, to forward the accused to a Magistrate; or if the offence is bailable to take security from him for his appearance before

such Magistrate. **But, whether a case comes under Section 169, or under Section 170 of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate under Section 173, in the manner indicated therein, containing the various details.**

Thus, the Apex Court had made clear that after completion of investigation, the Investigating Officer is bound to submit report under Section 173 of Cr.P.C. stating against whom there is sufficient evidence and against whom there is deficient evidence.

18. In **Gangadhar Janardan Mhatre Vs. State of Maharashtra and Ors., 2004 Cri.L.J.4623, SC** reliance is placed on Abhinandan's case (cited supra) and thereafter, it is observed in para 9 :

“ When a report forwarded to the Magistrate under Section 173 (2) (I) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156 (3) and require the police to make a further report. **The position is, therefore, well settled that upon report of a police under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190 (1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and**

independently apply his mind to the facts emerging from the investigation and take cognizance of the case. If he thinks fit, exercise of his powers under Section 190 (1) (b) and direct the issue of process to the accused. Therefore, this Court indicated in Bhagwant Singh's case (supra) (AIR 1985 SC 1285) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. “

19. In the light of above provisions, we find that Investigating Officer has discretion to take a decision under Section 157 (1) (b) of Cr.P.C. to investigate or not to investigate a case, but once he starts investigating the case, he has no right to take a decision against whom he should file report under Section 173 of Cr.P.C. He can submit report of sufficient evidence against some accused and deficient evidence against some accused, but the ultimate decision whether to make the accused persons to face the trial or not is to be taken by the Magistrate. If the F.I.R. shows specific allegations against particular persons and such persons are not prosecuted, such person can sue the informant for malicious prosecution. Therefore, when 'B' summary is to be filed, the hearing of the informant has been held to be mandatory. We, therefore, hold that the Investigating Officer has no discretion not to submit report under Section 173 Cr.P.C. against some of the accused persons on the ground that the material against them is deficient.

20. In the present case, on the basis of facts on record also we find that it was not a decision of not investigating the case against some of the accused. In fact, the investigation was made and the Investigating Officer came to the conclusion that the material against three accused persons was deficient. Even in such cases, he is bound to submit a report under Section 173 (2) read with Section 169 of Cr.P.C. It is then for the Judicial Magistrate to apply mind and take decision against such persons.

21. The F.I.R. was filed against four persons. The charge-sheet is submitted only against one Jagbirsingh. The Investigating Officer has not submitted charge-sheet or report under Section 173 Cr.P.C. of deficient evidence against the remaining three accused persons. As discussed above, he was bound to submit report. We, therefore, direct that the police station in-charge shall depute any Police Officer to carry out further investigation with regard to the involvement of respondents no.4 to 6 and after completing the investigation at the earliest, he shall submit either charge-sheet or report of deficient evidence as in his opinion, the investigation may reveal.

22. Since there is a single injury on the person of the victim, we are unable to accept the argument regarding malafides on the part of Investigating Officer, respondent no.3 Head Constable Syed. Since there is a single injury, considering the totality of the facts of the case, we are not inclined to exercise our powers under Article 226 of Constitution to issue directions to respondents no.1 and 2 to direct enquiry against respondent no.3 Head Constable Syed. However, we

make it clear that the Police Officer carrying further investigation shall be at liberty to record the statements of the relevant witnesses again and take appropriate decision with regard to submission of report under Section 173 of Cr.P.C. We also feel no necessity to quash the entire proceedings. We make it clear that the Investigating Officer shall carry out investigation and submit his report without anyway getting influenced by the observations made herein. Considering the long time elapsed from the date of lodging of F.I.R. we direct that the investigation shall be conducted expeditiously. Learned Judicial Magistrate shall be at liberty to take appropriate decision under Section 190 of Cr.P.C.

23. Prayer for quashing of charge-sheet is rejected. However, the Police Station in-charge is directed to appoint Investigating Officer to carry out investigation against respondents no.4 to 6 and submit report under Section 173 of Cr.P.C., as expeditiously as possible. Prayer (B) is rejected.

24. Rule is partly made absolute accordingly. There shall be no order as to costs.

(A.M. DHAVALÉ, J.)

(T.V. NALAWADE, J.)

vvr