

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

**CRIMINAL WRIT PETITION NO. 1157 OF 2009
WITH
CRIMINAL APPLICATION NO. 2795 OF 2010**

1. Sou. Rama w/o. Hemu Ghodke, .. Petitioners
Age. 55 years, Occ. Household & trade
R/o. Ward No.7, near New English
School, Shrirampur, at/post/taluka
Shrirampur, Dist. Ahmednagar.
2. Tina d/o. Hemu Ghodke,
Age. 19 years, Occ. Education & Household,
R/o. Ward No.7, Near New English School,
Shrirampur, at/post/taluka Shrirampur,
Dist. Ahmednagar.
3. Annu d/o. Hemu Ghodke,
Age. 18 years, Occ. Education & Household,
R/o. Ward No.7, Near New English School,
Shrirampur, at/post/taluka Shrirampur,
Dist. Ahmednagar.
4. Nisha d/o. Hemu Ghodke,
Age. 19 years, Occ. Education
R/o. As petitioner No.1.

[Amendment carried out as per Court
order dated 13.02.2014 in Criminal
application No.572 of 2014. Added
as petitioner No.4]

Versus

1. The State of Maharashtra .. Respondents
 2. The Superintendent of Police,
S.P. Office, Ahmednagar,
Dist. Ahmednagar.
 3. The Police Inspector,
City Police Station Shrirampur,
At/post/taluka Shrirampur,
Dist. Ahmednagar.
 4. The Taluka Executive Magistrate,
Shrirampur, At/post/taluka Shrirampur,
Dist. Ahmednagar.
 5. Dinkar s/o. Limbaji Morey,
Age. 43 years, Occ. Business,
 6. Shriram s/o. Limbaji Morey,
Age. 61 years, Occ. Business,
 7. Suresh s/o. Shriram Morey,
Age. 35 years, Occ. Business,
 8. Sunita w/o. Dinkar Morey,
Age. 40 years, Occ. Household,
- All R/o. Shrirampur, Ward No.7,
near New English School, Shrirampur,
Dist. Ahmednagar.

Mr.Shaikh Aftab S., Advocate for the petitioners.
Mr.S.J.Salgare, A.P.P. for respondents/State.
Mr.K.B.Autade, Advocate for respondent Nos.5 to 8 absent.

**CORAM : T.V.NALAWADE &
S.M.GAVHANE, JJ.**
DATED : 15.09.2017

JUDGMENT : [PER : S.M. GAVHANE, J.] :-

1. The petitioners have filed this petition under Articles 14,19,21 and 226 of the Constitution of India mainly for following prayers (C) and (D) of the petition.

(C) That, the compensation of Rupees One Lac each for petitioner Nos.1 to 4 i.e. totally Rupees Four Lacs be granted in favour of the petitioners on account of gross violation of their various fundamental rights for causing illegal detention by the Government through police authorities and the Taluka Executive Magistrate, Shrirampur, Dist. Ahmednagar.

(D) That the respondents be punished and the petitioners be compensated as the Hon'ble Court deems fit and just.

2. The facts giving rise to this petition are as under :-

A] Respondent Nos.2 and 3 respectively are the

Superintendent of Police, Ahmednagar and the Police Inspector of City Police Station, Shrirampur, Dist. Ahmednagar, while respondent No.4 is the Taluka Executive Magistrate, Shrirampur. The respondent Nos.5 to 8 are the persons at whose instance Chapter Case bearing No.98 of 2009 was filed against the petitioners.

B] The petitioners are permanent residents of Shrirampur, Dist. Ahmednagar and they are from same family. They reside in House No.98 within limits of Municipal Council, Shrirampur. Respondent No.5 and others particularly respondent Nos.6 to 8 had raised dispute in respect of premises and house of the petitioners and filed Suit bearing R.C.S No.86 of 1995 [Dinkar Limbaji Morey and others Vs. Hemu Sanna Ghodke and others] in the Court of Civil Judge, Junior Division, Shrirampur. It was dismissed on 02.05.2000. Regular Civil Appeal No.121 of 2000 was filed against the dismissal of the said suit in the Court of Additional District Judge, Shrirampur and the parties arrived at compromise. The compromise

petition was filed on 04.05.2000 in the execution petition.

C] Respondent No.5 – Dinkar Morey with others raised quarrel frequently with the petitioners to oust the petitioners from their house/premises possessed by them since last 35 years, on the ground that they are from Gujarat State, so also to cause mental and physical agony to them. Many criminal cases i.e. applications have been filed by the said respondents to the concerned police station for no fault of the petitioners. They have been constantly compelled to face police atrocities and misbehaviour of the persons. The police did not take any action or cognizance of written or oral complaint filed by the petitioners. Accordingly, the petitioner No.1 herself made a representation up to the Senior Police Officer, but of no use.

D] It is alleged that respondent No.8 – Savita Dinkar Morey and respondent No.5–Dinkar Limbaji Morey

filed complaint at City Police Station, Shrirampur on 25.07.2009, as a result of which Police Officer and other policemen from said police station caused arrest of the petitioner Nos.1 to 3 as well as petitioner No.1's minor daughter – petitioner No.4, namely, Nisha d/o. Hemu Ghodke, aged 14 years, in Chapter Case No.98 of 2009 in City Police Station, Shrirampur under section 151 and 107 of the Code of Criminal Procedure [for short “CrPC”] on 25.07.2009 in the evening hours and after arrest, put the petitioner Nos.1 to 3 in jail for whole night and on subsequent day, police constable Ambekar, Bakkal No.731 produced them before the Taluka Executive Magistrate, Shrirampur [respondent No.4], who ordered to furnish surety of Rs.5000/- each by the said petitioners, which could not be furnished by the petitioners and minor Nisha d/o. Hemu Ghodke [petitioner No.4] were further detained in jail. The date of birth of petitioner No.4-Nisha is 11.03.1994.

E] According to the petitioners, Chapter Case No.98

of 2009 was sent to the Taluka Executive Magistrate by Outward No.100 of 2009 dated 26.07.2009, in which names of petitioner Nos.1 to 3 including name of Nisha Ghodke [petitioner No.4] do appear. It is alleged that petitioner Nos.1 to 4 were arrested and confined in jail at the instance of respondent Nos.1 to 4, which is totally in violation of Articles 14,19 and 21 of the Constitution of India and it is a speaking example of police atrocities i.e. atrocities caused by the respondents.

F] The petitioners contend that at no point of time they were given chance to show cause against furnishing of bonds. As per Scheme of Chapter VII of the CrPC, the Magistrate who is acting under sections 107, 108 and 110 of CrPC has to give show cause notice under such sections and shall have to make order in writing. Thus, while the Magistrate takes action under section 111 of the CrPC, he has no power to arrest or detain a person. His power is to issue Show Cause Notice and if necessary start

enquiry. During enquiry, a person should be asked to give bond and if he refused to give bond, then said person may be sent to custody till the enquiry is completed and final order can be passed under section 117 of the CrPC. Even if a person who is directed to give bond and if he failed to give bond, he cannot be sent to jail, unless some sort of enquiry is conducted, as held by the Supreme Court in the case of Madhu Limaye Vs. Sub Divisional magistrate, AIR 1971 SC 2486.

3. Affidavit-in-reply of Nayab Tahsildar, Shrirampur is filed on behalf the respondents/State. It is stated in the affidavit that Chapter Case as stated by the petitioners is pending before respondent No.4. The petitioners are aggrieved by the action taken against them by notice dated 26.07.2009. Their claim is misconceived and apparently contrary to the provisions of law. Notice was issued to the petitioners as authority found that the parties are agitating their claim and there is apprehension that they may cause serious offence

in relation to personality and action is taken to prevent any such violation of any such illegal activity. The petitioners and other party to the proceeding i.e. Smt. Sunita Dinkar Morey [respondent No.8] are residing near each other. There is dispute in relation to property in Civil Court in suit bearing RCS No.40 of 2006. They are annoyed due to said dispute. Therefore, they are making complaints to the police station against each other. They have been given understanding that the dispute between them is of civil nature and it is subjudice and that till the decision of the Civil dispute, they shall not cause disturbance. However, they have not changed their attitude and continued to make complaints against each other. Therefore, as per powers vested under section 107 of the CrPC., case is registered against them bearing Case No.81 of 2009. Thereafter, Chapter Case No.98 of 2009 is registered against the present petitioners. It is further stated in the affidavit that instead of attending the notice issued against them, the petitioners have avoided to furnish surety and approached this Court. The

petitioners have suppressed material facts. The complainant is not made party to the petition. When the authorities found that there is apprehension to the person and disturbance of peace, action is initiated against the petitioners as preventive measures from causing serious offence and to maintain peace. It is stated that the petition deserves to be dismissed.

4. Petitioner No.1-Sow. Rama Ghodke filed rejoinder affidavit to the affidavit-in-reply filed on behalf of respondent No.1, dated 27.01.2010 stating that the Nayab Tahsildar has suppressed true facts. He has totally made false statements in para No.6 and the fact is that police of City Police Station, Shrirampur arrested her and her daughters - petitioner Nos.2 and 3 including her minor daughter - petitioner No.4 on 25.07.2009 in the evening hours and put them behind the bar and on the subsequent day, Police Constable - Ambekar Bakkal No.731 produced them before the Taluka Executive Magistrate, who ordered for furnishing surety. It is stated that she [petitioner

No.1] and her daughters were illegally arrested, abusing the powers and ignoring the mandatory provisions of the relevant chapter proceeding cited in the judgment in the case of **Pravin Vijaykumar Taware & Ors. Vs. The Special Executive Magistrate, Dist. Pune & Anr., 2009 ALL MR (Cri) 2093.**

5. On behalf of respondent No. 3- PHC-Tukaram Ambekar has filed affidavit in reply on 27.08.2010 stating that respondent No.8 - Sunita Morey and petitioner No.1 Rama Ghodake are residing in Ward No.7 near New English School Shrirampur, adjacent to each other. There is dispute amongst them in respect of landed property. Civil Suit bearing RCS No.40 of 2006 is pending before the Civil Court Shrirampur. In view of civil litigation pending between the rival parties, there were quarrels amongst them on petty grounds and they used to file complaints in the police station. The dispute amongst them is of civil nature. Both the parties were directed to get the matter decided before the Civil

Court, as the dispute is in respect of landed property. In spite of warning given to both the parties, they carry on their dispute and did not change their attitude. One Rama Hemu Ghodke made complaint to the Superintendent of Police, Ahmednagar. Said complaint was received to City Police Station, Shrirampur on 24.04.2009. As per the directions of the Superintendent of Police, Ahmednagar, A.S.I. Shri Shelar enquired into the said application and registered Chapter Case No.81 of 2009 under section 107 of the CrPC against Sunita Dinkar More and other inmates. After the registration of said Chapter Case, Sunita and others were produced before the Taluka Executive Magistrate for necessary action in respect of keeping peace in the vicinity. A lady constable accompanied Sunita. It is further stated in the affidavit-in-reply that thereafter Sunita Morey filed complaint on 29.06.2009 at Shrirampur Police Station. On said application, the then PI of Shrirampur Police Station directed him to conduct enquiry. He conducted enquiry in the above said application of Sunita. After enquiry, he

registered Chapter Case No.98 of 2009 under section 107 and 151 of CrPC against petitioners and they were produced before the Taluka Executive Magistrate on 26.07.2009. As there was apprehension in his mind that the petitioners may commit physical offence, to preserve law and order, he had arrested the petitioners. After arrest of the petitioners, all of them were medically examined and relatives were properly informed. He stated that after production of the petitioners before the Taluka Executive Magistrate, the Taluka Executive Magistrate had released them on executing bond of good behaviour. He stated that as contended by the petitioners, one Nisha d/o. Hemu Ghodke [now petitioner No.4] was minor, but at the time of arrest and producing before Taluka Executive Magistrate, nobody disclosed or protested that said Nisha was minor. He had acted in good faith while discharging his duty without any malice against the petitioners, stating that there is no merit or substance in the petition, he stated that the same may be dismissed.

6. We have heard learned Counsel appearing for the petitioners, learned A.P.P appearing for respondent Nos. 1 to 4 and none was present for respondent Nos.5 to 8. Learned Counsel appearing for the petitioners made submissions in the light of contentions in the petition that the Executive Magistrate has not followed the procedure given in sections 107, 108, 111, 116 and 117 of the CrPC and without giving an opportunity to the petitioners to file their reply in the chapter proceeding against them, illegally detained them, including petitioner No.4, daughter of petitioner No.1, who was minor at the relevant time. There is scribbling and scratches in respect of dates in the order passed on notice dated 26.07.2009. It is submitted that respondent No.4 – Taluka Executive Magistrate had no authority to direct the petitioners to give interim bond pending the chapter proceeding. It is submitted that the petitioners were arrested on 25.07.2009 in the evening hours and put in jail for whole night and on subsequent day, PHC

Ambekar produced them before respondent No.4 – Taluka Executive Magistrate, who passed order to furnish surety of Rs.5000/- each, but they could not furnish the same immediately and therefore they were further detained in jail. It is submitted that therefore compensation as prayed for may be granted to the petitioners.

7. Learned A.P.P. appearing for respondent Nos. 1 to 4 made submissions in the light of affidavit-in-reply of Nayab Tahsildar submitted on behalf of respondent No.1 and affidavit-in-reply filed on behalf of respondent No.3 – PHC Ambekar. It was fairly conceded by the learned APP that after registration of the Chapter Case, the petitioners were arrested as required under section 151 of the CrPC and they were produced before respondent No.4 – Taluka Executive Magistrate on 26.07.2009 and that Chapter Case was registered on 25.07.2009.

8. Copy of report dated 26.07.2009 submitted by ASI Shrirampur City Police Station to the Taluka Executive

Magistrate, Shrirampur shows that it is in respect of registration of chapter Case No.98 of 2009 under sections 151 and 107 of CrPC on the basis of report given by the PHC Ambekar requesting to take prohibitory action against petitioners and to obtain bond of good behaviour from them and to take interim bond from them as per section 116(3) of CrPC pending chapter proceeding. It appears that on the said report, Nayab Tahsildar passed order on 26.07.2009.

आज दि. २५/७/२००९ रोजी सामनेवाला १ ते ४ यांना माझे समोर दुपारी १२.३५ वाजता पो.काँ. आंबेकर ब.न. ७३१ यांनी हजर केले. जेलर जामीन घ्या. नाहीतर २७/०७/०९ रोजी मुदत द्या. P.R. Bond Rs.5000/- प्रत्येकी घ्या.

9. Before considering the aspect as to whether the aforesaid order of respondent No.3 amounts to illegal detention of the petitioners entitling them to compensation, it is necessary to refer to the decisions relied upon by the learned Counsel appearing for the petitioners. In the case of Pravin Vijaykumar Taware [Supra], the observations of Division Bench of this Court in paragraphs 6 and 9 are as under :-

6. At no point of time the petitioners were given a chance to show cause against the furnishing of bond and at no point of time they were also given a chance to arrange for the bond and the conditions imposed were such that it was impossible to get a bond from the Chairman with whom according to the petitioners, the petitioners had a dispute. This is absolutely indefensible. The scheme of Chapter VIII of the Criminal Procedure Code is that when a Magistrate acting under Sections 107, 108, 109 or 110 of the Criminal Procedure Code deems it necessary to require any person to show cause under such sections, he shall make an order in writing. Therefore, when the Magistrate takes action under Section 111 of the Criminal Procedure Code, he has no power to arrest and detain a person. His power is to require to show cause and if necessary start an inquiry. Inquiry has to be done in terms of Section 116 of the Criminal Procedure Code and if at that stage the Magistrate is of the view that during the inquiry a person should be asked to give a bond and he refuses to give a bond then the person may be sent to custody till the inquiry is complete and final order can be passed under Section 17 of the Criminal Procedure Code. Now this section also has proviso. One of the proviso is, "No person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour". Then the second proviso is that, "the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111".

9. After hearing the learned Public Prosecutor and also the Executive Magistrate, who was also present in the Court, we give benefit of doubt to the Magistrate on the ground that perhaps these Magistrates are not aware of the law. They are not trained to act as Magistrate. We understand they have not undergone any training before they were given the powers of a Magistrate. When a person is appointed or posted as an Assistant Commissioner of Police, he is almost mechanically

appointed as an Executive Magistrate and is given authority to execute powers under Chapter VIII of the Criminal Procedure Code. Since the Government is not interested in taking away these powers from the Police Officers and handover the powers to judiciary or to revenue officials, we are inclined to give the following directions :

(1) That the State Government shall immediately take steps to train its all Executive Magistrates so that they understand as to how the provisions of Chapter VIII of the Criminal Procedure Code have to be applied.

(2) We understand that there is a police academy in the State. All the Executive Magistrate should undergo a crash course. Preferably the Sessions Judges should be invited to teach these Magistrate about the nuances of law, so that the powers are not abused or misused by the Executive Magistrate.

(3) Whenever, an order is passed by a Magistrate at interim stage or at final stage requiring a person to give a bond, he shall be given sufficient time to furnish the bond and the surety.

(4) At the stage of inquiry, the Magistrate shall not ask for an interim bond pending inquiry unless the Magistrate has satisfied himself about the truth of the information sufficient to make out a case for seeking a bond.

(5) Whenever, an Executive Magistrate passes an order under sub-section (3) of Section 116 of Chapter VIII of the Criminal Procedure Code directing a person to be sent to jail, a copy of the order shall be sent to the learned Principal Sessions Judge immediately.

(6) On receiving copy of the order, the learned Principal Sessions Judge shall go through the order and if he finds a case of revision, he may intervene under Section 397 of the Criminal Procedure Code.

(7) A copy of the order directing a person to be sent to jail under Chapter VIII of the Criminal Procedure Code shall also be sent to the immediate superior of the Magistrate in his Department.

10. In the case of Niraj Ramesh Jariwala & Ors. Vs. Mahadeo Pandurang Nikam & Ors., 2013 ALL MR (Cri) 1,

Division Bench of this Court has observed in paragraphs 18 and 20 as under :-

18. In the present case, the age of both the Petitioners (second and third Petitioners) is above 60 years. They were arrested at 20.50 on 2nd December 2011 at Aurangabad and were brought to Navghar Police Station, Mulund, Mumbai from Aurangabad at 20.20 on 3rd December 2011. They were taken from Aurangabad at 22.50 and they reached Navghar Police Station, Mulund, Mumbai, nearly after 22 hours. They were shown as arrested in the morning of 4th December 2011 and were released on bail in the afternoon. Though the said Petitioners were arrested just before 20.50 On 2nd December 2011 at Aurangabad, they were shown as arrested in Mumbai at 08.10 on 4th December 2011. They were thus illegally detained by the Police nearly for 35 hours and 40 minutes. As they were not shown as arrested for a period over 35 hours, they could not apply for bail. Apart from gross violation of their fundamental rights, there is a gross breach of the directions issued by the Apex Court from time to time. There is no dispute about the facts. Therefore, in the present case, both the second and third Petitioners are entitled to reasonable compensation of Rs.2,50,000/- each. Interest payable on the said amount will be at the rate of 8% per annum from the date of filing of the present Petition i.e. 28th February 2012.

20. Whether the first Respondent acted as per the instructions of the Senior Inspector of Police and whether the Senior Inspector of police has played any role are the matters which cannot be decided in writ jurisdiction. Suffice it to say that when the gross violation of fundamental rights under Articles 21 of the Constitution of India at the hands of the police

officers of the State is established, the compensation will have to be paid by the State Government and it will be open for the State Government to recover the same from the officers found guilty of dereliction of duty by following due process of law. It is also necessary to direct the Commissioner of Police, Mumbai, to nominate either a Joint Commissioner of Police or Additional Commissioner of Police to hold an inquiry for ascertaining as to who is responsible for violation of fundamental rights of the second and third Petitioners guaranteed under Article 21 of the Constitution of India. On the basis of the report, the State Government will have to initiate appropriate proceedings against the concerned erring police officers in accordance with law.

11. In the present case, it is clear from the order of the Taluka Executive Magistrate dated 26.07.2009 that before passing said order directing the petitioners to give bond of good behaviour and to take interim bond from them as per section 116(3) of CrPC, pending chapter proceeding, no show cause notice was given to them against furnishing of bond in the light of provisions under section 116 of CrPC and in the light of observations of this Court in the case of **Pravin Vijaykumar Taware [Supra]**. Naturally, therefore, action of the concerned respondents taking the petitioners in custody on their failure to furnish bond is not in accordance with law. It is not disputed by respondent

No.1 that the chapter case was registered against the petitioners. So also, respondent No.3 Police Inspector of City Police Station, Shrirampur has not disputed that on complaint received from the Superintendent of Police, Ahmednagar, chapter case was registered under section 107 CrPC against the petitioners and after enquiry in the chapter case, the petitioners were produced before the Taluka Executive Magistrate on 26.07.2009 and after arrest of all the petitioners, they were medically examined. Said respondent does not dispute that after arrest on 25.06.2009, the petitioners were produced on next day. Thus it is clear that after the petitioners were arrested on 25.07.2009, they were in custody for whole night till 26.07.2009 as on subsequent day, they were produced before the Taluka Executive Magistrate. Thus, it is clear that they were in custody for whole night. Therefore, it can be said that without giving show cause notice as required by law to the petitioners, to show cause, before directing them to furnish bond and on their failure, they were detained for whole night on

25.07.2009.

12. Now it is to be seen whether on account of above detention of the petitioners, they are entitled to compensation as claimed by them. As held in the case of Pravin Vijaykumar Taware [Supra], the guidelines were issued by this Court, but it appears that said guidelines were not observed. In the said case also proper procedure was not followed while directing petitioners to give bond, but no compensation was granted for the reasons given in para 9 of the said decision referred supra. Considering the guidelines in paragraph No.9 of said decision, we hold that the petitioner Nos.1to3, who are major, are not entitled to compensation and considering the fact that petitioner No.4 was minor and she was detained by the respondent Nos.3 and 4, it would be just to award compensation of Rs.25,000/- (Rupees Twenty Five Thousand) to her.

13. As regards prayer "C" to punish respondents, the

said aspect cannot be decided in writ jurisdiction. The respondent No.2 – the Superintendent of Police to make necessary enquiry against police personnel, who prepared report to take action against petitioners and to fix the responsibility, from whom amount of compensation as above can be recovered by the State. Hence, following order is passed.

14. The petition is allowed. The respondent State is directed to pay compensation of Rs.25,000/- (Rupees Twenty Five Thousand) to the petitioners and particularly in favour of petitioner No.4 Nisha d/o. Hemu Ghodke, who was minor at the relevant time. The amount is to be deposited within 45 days from the date of this order. If the amount is not deposited, the amount shall carry interest at the rate of 8% per annum. There will be liberty to recover this amount from the police officer who prepared report of chapter case and who was responsible for taking such action against the minor. Rule is made absolute in those terms.

15. In view of disposal of the writ petition, connected Criminal Application does not survive and same stands disposed of accordingly.

[S.M.GAVHANE, J.]

[T.V.NALAWADE, J.]