

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 806 OF 2017**

Dinesh Agarwal ..Petitioner
Versus
The State of Maharashtra and anr. ..Respondents

Mr. M. M. Najmi i/b. Mr. Mehul Thakkar, advocate for the petitioner.
Ms. Sangeeta D. Shinde, APP for the State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, JJ.**

DATE : 14th NOVEMBER, 2017.

P. C. :

Heard learned counsel for the petitioner and learned APP
for the State.

2. By this petition, the petitioner has challenged the notice dated 29th December, 2016, issued to him by the Police Inspector, Pydhonie Police Station, Mumbai. By the said notice, the petitioner was called upon to produce documents and submit his say within a period of 10 days. The said notice was issued pursuant to the order of the learned Magistrate passed under Section 202 of the Code of Criminal Procedure, 1973 in CC No.150/SW/2016 filed by Mohanlal Agarwal before Additional Chief Metropolitan Magistrate, 2nd Court at Sewri (Mazgaon), Mumbai.

3. Mr. Najmi, learned counsel for the petitioner submitted that the learned Magistrate had directed the Police Inspector, Pydhonie Police Station, Mumbai, to carry out investigation into the subject complaint of. He further submitted that in such proceedings, the police cannot compel the petitioner to produce documents or disclose his defence. He submitted that the criminal case fails or succeeds on its own and defence of the accused is not relevant at the stage of Section 202. Mr. Najmi relied upon the decisions of the Apex Court in **National Bank of Oman versus Barakara Abdul Aziz and anr. 2013(2) SCC 488 and Fiona Shrikhande versus State of Maharashtra 2013(14) SCC 14.**

4. Ms. Shinde, learned APP, on the contrary, submitted that the impugned notice is not prejudicial to the interest of the petitioner. On the contrary, it was issued to protect the petitioner's interest so as to give him an opportunity to explain the allegations made against him and to produce the documents in support of his case. Ms. Shinde also submitted that, despite notice, the petitioner has not approached Pydhonie Police Station and, in the event, the petitioner refuses to approach the Police Station, appropriate report would be filed before the concerned magistrate in the subject criminal case and the petitioner is, accordingly, informed by the letter dated 18th January, 2017.

5. We have seen the copy of the letter dated 18th January, 2017 addressed to the petitioner by the Police Inspector, Pydhonie Police Station. The letter recorded that despite earlier letters, the petitioner has not remained present before the Police Station. The letter further stated that the petitioner should remain present within a period of 8 days to submit his say in the subject criminal case. It is also stated that, in the event, the petitioner fails to remain present, then, it will be assumed that the petitioner has nothing to say and appropriate report would be filed before the magistrate. Ms. Shinde, learned APP, stated that no coercive action would be taken against the petitioner in pursuant of the notice impugned in the present petition. In that view of the matter, we do not find any reason to entertain the present petition. The writ petition is, accordingly, dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]