

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2620 OF 2016

Vijay Kumar Jagdishray Chawla ... **Petitioner**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Mr.Saurabh D.Butala, Advocate for the Petitioner.

Mr.Vinod Chate, APP for the Respondent/State.

Mr.M.S.Mohite i/b. Mr.Siddharth C.Wakankar, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 20th September 2017.

P.C. :

1 By this petition, the petitioner against whom the FIR came to be lodged by respondent No.2 herein is challenging the Order dated 23/02/2016 passed by the learned Judicial Magistrate First Class, Vadgaon Maval rejecting 'B' summary filed by Lonavala City Police and further directing reinvestigation of the crime.

2 Heard the learned Advocate appearing for the petitioner. He vehemently argued that in fact the learned trial Magistrate was swayed by affidavits filed not by the First Informant, but by a witness named John Joseph. Therefore, the

impugned order which is solely based on affidavits of one of the prosecution witnesses and that too directing reinvestigation is illegal. The learned Advocate drew my attention to documents annexed to 'B' summary report as well as affidavits filed by John Joseph and contended that the impugned Order directing reinvestigation is totally illegal.

3 The petition came to be opposed on behalf of the respondent No.2/First Informant by contending that the Protest Petition was lodged by the First Informant and the First Informant has also placed on record affidavits of witness John Joseph, which demonstrate that the investigation was not done honestly. The learned APP appears for the State.

4 I have carefully considered the rival submissions and also perused the documents made available on record.

5 On 18/12/2013, respondent No.2 Girimon lodged the FIR against the present petitioner. Averments in the FIR are to the effect that petitioner/accused Vijay Kumar Jagdishray Chawla had booked two villas with First Informant Girimon and towards part consideration of the purchase price of these two villas, he paid Rs.One crore to First Informant Girimon. However, that transaction could not be materialized and, therefore, accused Vijay Kumar Chawla was insisting him to pay back amount of Rs.One

crore with interest. This ultimately culminated in the incident dated 18/12/2013. First Informant Girimon alleged that Anil Bagla – the mediator had called him at the bungalow of petitioner Vijay Kumar Chawla situated at Valvan. There he was threatened and abused by Vijay Kumar Chawla for getting repayment of the amount advanced. According to the First Informant, he was assaulted there by Vijay Kumar Chawla (petitioner), as well as four unknown persons. Assault was allegedly made by blunt side of knife and sword. This FIR has resulted in registration of the offence punishable under Section 323, 141, 143, 147, 504, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as “IPC” for the sake of brevity) with Lonavala City Police Station. After investigation, report came to be filed by the police with prayer to grant 'B' summary. The Investigator alleged that false complaint is lodged by First Informant Girimon.

6 On receipt of the report claiming 'B' summary, First Informant Girimon came to be noticed and he has filed his written statement. It appears that witness John Joseph has also filed his affidavits and written statement before the learned J.M.F.C., Vadgaon Maval. Witness John Joseph reported to the learned J.M.F.C. that his statement was got prepared and his signature was obtained thereon. He alleged that in fact the incident in question as stated in the FIR did take place. It is alleged by witness John Joseph that his statement under Section 161 of the Code of

Criminal Procedure (hereinafter referred to as “Code” for the sake of brevity) was never recorded by police. His signature was taken on the statement typed by police. He has disowned contents of that statement, which according to him, is not his statement but a document prepared by the police.

7 Though a witness is not expected to file his own affidavit before the Court when the Court is seized with the matter regarding acceptance or rejection of 'B' summary report, *prima facie*, it appears that statement John Joseph claimed to have been recorded under Section 161 of the Code, in fact bears his own signature. If really it was recorded by police, then it ought not to have contain his own signature. This *prima facie* demonstrate that investigation did not take place on correct line and what has been pointed out to the learned J.M.F.C., by witness John Joseph seems to be correct. It will have to be kept in mind that there is no prohibition in law preventing the witness to point out correct facts to the J.M.F.C. To crown this all, report of 'B' summary itself contain a document showing that the First Informant was medically examined on the day of alleged incident and he was found to have sustained injuries in the nature of blunt trauma, abrasion, contusion etc. This *prima facie* vouch correctness of the FIR lodged by First Informant Girimon.

8 In the light of this observations, I find no fault in the impugned order rejecting 'B' summary. However, the learned

Magistrate erred in directing reinvestigation of the matter. It appears that instead of 'further investigation', the word 'reinvestigation' is used by the learned trial Magistrate while rejecting 'B' summary. Use of incorrect word will not vitiate the impugned Order. Hence, it is clarified that the impugned order be construed as an Order directing further investigation in the matter. With this observation, the writ petition stands dismissed.

9 On request of the learned Advocate appearing for the petitioner/accused, ad-interim order dated 1st September 2016 is continued for further period of four weeks.

(A.M.BADAR J.)