

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.640/2016

Namdevrao s/o Mallanaji Gadpalliwar and others

...Versus...

State of Maharashtra, through its Secretary, Ministry of Home Department,
Mantralaya, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.N. Morande, Advocate for petitioners
Shri V.A. Thakare, Addl. P.P. for respondents – State

**CORAM : PRASANNA B. VARALE AND
ARUN D. UPADHYE, JJ.**

DATE : 08.11.2017

1. Heard.
2. By filing this petition, the petitioners are seeking quashment of F.I.R. Dated 22/3/2016 registered vide Crime No.48/2016 at Police Station Gadchiroli against the petitioners for the offences punishable under Sections 353, 294, 506 read with 34 of Indian Penal Code.
3. While issuing notice by order dated 24/8/2016 this Court though permitted the Investigating Agency to continue with the investigation directed the agency not to file the charge-sheet till next date. By order dated 11/9/2017 this Court, with a query to the respondents that whether the charge-sheet is prepared and ready for filing, directed the respondents to keep the charge-sheet ready for perusal of this Court.

4. Learned Counsel for the petitioners vehemently submitted that the petitioner nos.1 and 2 are old aged persons whereas the petitioner no.3 is a lady. The petitioners are related to each other, namely, petitioner nos.1 and 2 are the husband and wife and are the parents of petitioner nos.3 and 4. Petitioner no.3 is daughter of petitioner nos.1 and 2, whereas the petitioner no.4 is son of petitioner nos.1 and 2. It is the case of the petitioners as submitted by the learned Counsel for the petitioners that the petitioner no.1 was actively assisting the law enforcing agency and his work was appreciated by the police authorities as well as the District Administrative Authorities by issuing the certificates of the acknowledgment of his work. The learned Counsel while attacking on the F.I.R. lodged at the instance of one Ajay Tunkalwar vehemently submitted that the report only states of an alleged misdeed of petitioner no.4, i.e., son of petitioner nos.1 and 2. He then submitted that a casual and general reference is made against the other petitioners in the concluding part of the report. The report then is silent on another act attributing to petitioner nos.1 to 3. The learned Counsel then submitted that it is alleged that the petitioners were indulged in an act of obstructing the public servants who were discharging their official duty. On the backdrop of the allegations in the report, the petitioners are alleged to have committed the offences under Sections 353, 294, 506 read with Section 34 of Indian Penal Code. It was also the submission of the learned Counsel for the petitioners that the officers were instigated by some persons carrying ill-will against the petitioners and on a ground that the petitioners raised an illegal construction or the petitioners

therefore guilty of encroachment. The learned Counsel submitted that as there is already a civil proceeding pending before the Collector filed by the petitioner no.1, the officials could not have hastily and hurriedly approached the spot raising the allegation against the petitioner that he was an illegal occupant of the premises. Learned Counsel for the petitioners then vehemently submitted that the report was too short to make out any case for effecting immediate arrest of the petitioners and more particularly petitioner nos.1 and 2 who are the old aged persons. Learned Counsel then submitted that the action of the respondents firstly lodging the report and asking the petitioners to face a criminal prosecution vide report dated 22/3/2016 on an unsustainable material, secondly, effecting arrest of these petitioners without there being any justifiable reason and thirdly non-observation of the guidelines of the Hon'ble Apex Court while issuing arrest in view of the judgment in the case of ***Arnesh Kumar...Versus...State of Bihar and another***, reported at ***(2014) 8 Supreme Court Cases 273*** is illegal and is the ground for quashing the report and quashing further criminal proceedings initiated against these petitioners.

5. The learned Counsel for the petitioners submitted that the Hon'ble Apex Court considering the very situation that arrest brings humiliation, curtails freedom and casts scars, directed the authorities to scrupulously follow the provisions of law and more particularly Section 41 of the Code of Criminal Procedure. It was the submission of the learned Counsel for the petitioners that as there is a clear breach of the directions of the Hon'ble Apex Court, the petitioners are also entitled for compensation as it was

awarded by the Hon'ble Apex Court by its judgment dated 3/6/2016 in the case of ***Dr. Rini Johar and another...Versus...State of M.P. and others*** in ***Writ Petition (Criminal) No.30/2015***. Learned Counsel for the petitioners in support of his submission placed reliance on the observations of the Hon'ble Apex Court in the case of ***Arnesh Kumar*** (Supra) more particularly reflected in paragraph nos.1, 11 and 12.

6. Per contra, the learned Additional Public Prosecutor, by referring to the various replies filed on behalf of the respondents – authorities, namely, the District Magistrate, Sub Divisional Officer and the District Collector, Gadchiroli District as well by referring to the material collected by the Investigating Agency resulted in the form of charge-sheet, submitted that the report itself shows that the petitioners were present on the spot and the petitioner no.4 gave abuses and threats to the officers who were discharging their duties, namely, Tahsildar of Gadchiroli, Talathi of Rampur Tukum, Talathi of Mudza (Bu.) and Talathi of Kotgal. Learned Additional Public Prosecutor submitted that the F.I.R. refers to the fact that the petitioner no.4 was possessing a petrol-can and while giving abuses itself he was holding the petrol-can. Learned Additional Public Prosecutor submitted that the agency reached on the spot and found that the petitioner no.4 was abusing the officers who were discharging their duty, was possessing the petrol-can and the other petitioners were obstructing these officers in discharge of their duty and as the petitioner no.4, who was violent possessing a petrol-can in his hand, opined that there may be problem of law and order and the situation would have been worsened if the petitioner no.4, who

was holding petrol-can in his hand indulged in some further ill act. Learned Additional Public Prosecutor submits that perusal of the F.I.R. would reflect that there was not only an apprehension of disturbance to law and order but there was a serious apprehension of threat of life to these officers who were discharging their duty. Learned Additional Public Prosecutor submitted that considering this peculiar circumstance and situation, the police officials were left with no choice but to effect the arrest of the petitioners. Learned Additional Public Prosecutor submitted that the petitioner nos.1 and 2 were arrested and immediately produced before the learned Magistrate. The learned Additional Public Prosecutor submitted that the petitioners prayed for bail. The learned Magistrate was not satisfied with the plea and the prayer for bail was rejected and the petitioners were remanded to magisterial custody. The petitioners then approached to the learned Sessions Judge and on 29/3/2016. The learned Sessions Judge was pleased to allow the application of these petitioners. It was also the submission of the learned Additional Public Prosecutor that when the petitioners were before the Magistrate with a prayer for bail, it was the subjective satisfaction of the learned Magistrate which resulted in rejection of the prayer for bail and remanding the petitioners to magisterial custody. The learned Additional Public Prosecutor submitted that insofar as the orders of the learned Magistrate and the learned Sessions Judge are concerned, they were on the respective subjective satisfaction of the learned Judicial Officers and the respondents had no role to play in the ultimate decision to be arrived at by the learned Judicial Officers except by presenting

the material before these officers and on the material to oppose the application, if the matter demands so. The learned Additional Public Prosecutor then submitted that the respondents have scrupulously followed the directions of the Hon'ble Apex Court in the case of *Arnesh Kumar* (Supra). The learned Additional Public Prosecutor submitted that the Hon'ble Apex Court itself made it clear that the facts of each matter would decide the fate of the matter and there cannot be a blanket formula to be applied in each and every case. Learned Additional Public Prosecutor submitted that the petitioners only applied for allotment of Government land and with reasoned orders the authorities rejected the prayer of the petitioners. The learned Additional Public Prosecutor submitted that the petitioners approached the Collector for allotment of land.

7. It was the submission of learned Counsel for the petitioners that the proposal of the petitioners for allotment of land is pending before the Collector.

8. On the backdrop of the rival submissions referred to above by the learned Counsel appearing for the respective parties, we have gone through the material placed on record. On a perusal of the material on record we find that though the submissions of the learned Counsel for the petitioners look attractive at the first blush, on a perusal of the material, we are of the opinion that we are unable to accept the submissions of the learned Counsel appearing for the petitioners. It was the submission of the learned Counsel for the petitioners that there was no reference of any act of attributing to petitioner nos.1 to 3 in the report and there is only a general reference against the

petitioner nos.1 to 3 in the report. Perusal of the report dated 22/3/2016 clearly shows that three public servants reached on the spot, namely, Naib Tahsildar, Gadchiroli Shri Kharkar, Talathi of Rampur Tukum, Talathi of Mudza (Bu.) and Talathi of Kotgal along with staff of the Municipal Council. The petitioner no.4 who was present on the spot abused these officers in filthy language. The petitioner no.4 was possessing a petrol-can in his hand. There is a reference in the report that the petitioner nos.1 to 3 were also obstructing these officers in discharge of their duty. It may not be out of place to state that the F.I.R. is not an encyclopedia to give the detailed account of minute to minute. The report is clearly stating about the act of causing obstruction to the public servants and giving abuses in filthy language. As this Court in earlier order permitted the respondents to keep the charge-sheet ready for perusal of this Court, we have gone through the charge-sheet. It would be necessary to refer to the statement of the officer, who was discharging his duty, namely, Talathi of Gadchiroli Shri Kharkar. In his statement reflected on 24/3/2016 Shri Kharkar clearly states that when he reached on the spot under the directions of his superior officers along with his other colleagues with the staff of the Municipal Council he found petitioner no.4 as present and the premises was locked. Shri Kharkar then requested to petitioner no.4 to open the lock and informed the petitioner no.4 that he reached the spot in discharge of his official duty. Shri Kharkar then stated that the petitioner no.4 started abusing to these officers. Shri Kharkar specifically stated that attempts were made to pacify petitioner no.4 who was possessing a petrol-can in his hand so as to avoid any untoward situation and in spite of

repeated attempts to pacify the petitioner no.4, the petitioner no.4 was not paying any heed to the officers. Petitioner nos.1 to 3 were also abusing these officers in filthy language and they were causing obstruction to these officers. Shri Kharkar then stated that the police officials considering the situation were left with no choice but to effect the arrest of the petitioners. Similar is the statement of the other officers, namely, the Circle Officer Shri Muppidwar, Talathi Shri Khandre, Talathi Shri Bombole, Talathi Shri Kumre and Talathi Shri Jawanjalkar. Apart from these revenue officers the statements of employees of Municipal Council are also recorded. It will not be necessary to refer to all statements of the employees of the Municipal Council and the purpose would be served if we refer to two of these statements, namely of one Shri Lomesh Deshmukh who is driver in the Municipal Council, Gadchiroli and one Shri Sanjay Jilewar who is Class-IV employee in Municipal Council, Gadchiroli.

9. From the perusal of the record it reveals that the petitioner no.1 initiated a civil litigation against the neighbour for establishing his civil right over the property which is a Government property and interestingly enough without making the Government a party to that civil litigation. The affidavit filed on behalf of the respondent no.3 – Collector, Gadchiroli shows that though the petitioners submitted a proposal to the Sub Divisional Officer, Gadchiroli for allocation of land the office of the Collector, Gadchiroli intimated the Sub Divisional Officer, Gadchiroli that for the reasons stated in the communication the office of the Collector was not inclined to grant the proposal. The material placed on record also shows that the petitioner no.1 was

given notices for removal of encroachment. The communication dated 4/3/2016 placed on record shows that it was informed to the petitioner that he had indulged in an act of encroachment over the Government land. By the very communication it was informed to the petitioner no.1 that as the petitioner raised an encroachment, i.e., tin-shade on the Government land the petitioner on his own shall remove the said construction on or before 14/3/2016 and if the petitioner failed to comply with the direction, the encroachment of the petitioner would be removed through the Government agency. This communication was in response to communication received by the Sub Divisional Officer dated 2/1/2015 as well a notice issued by the petitioner dated 17/2/2016. Thus, the petitioners were well aware of the fact that the authorities are not inclined to accept the proposal and were informed to remove the encroachment made by the petitioner, but in spite of these facts the petitioner nos.1 to 3 who were present on the spot caused the obstruction to the public servants who were discharging their official duties and the petitioner no.4 was acting in a violent manner, was possessing a petrol-can in his hand and was abusing the officers in filthy language. These peculiar circumstances lead the police officials to act in the matter considering the seriousness of the situation and at that point of time the officers were of the opinion that if the petitioners are not arrested there may be a situation of disturbance to law and order or the officers who were discharging their duty may have a serious threat to their life.

10. The learned Counsel for the petitioners though placed a very heavy reliance on the judgment of the Hon'ble Apex Court in the case of **Arnesh Kumar** (Supra), in our opinion, the learned Additional Public Prosecutor was justified in submitting that these directions of the Hon'ble Apex Court though are necessary to be followed, the Hon'ble Apex Court also gave a caution that the decision ultimate is of the officers concerned and considering the situation prevailing at that time the police officers may take a decision of effecting arrest and this caution finds place in paragraph 7.1 of the judgment while referring to the provisions of Section 41 of the Code of Criminal Procedure. The provisions of Section 41 (1) (ii) (a) empowers the police officer to effect the arrest on his subjective satisfaction to prevent the person from committing further offence. Paragraph 7.1 of the judgment concludes that the statements of these are the conclusions, which one may reach based on facts.

11. At the cost of repetition, we say that in the present matter the material presented before us reflected that the police officials on the backdrop of the peculiar circumstances were left with no choice but to effect the arrest of the petitioners. It is also not in dispute that the petitioner nos.1 and 2 were arrested and were immediately brought before the learned Magistrate on the very day. The petitioners approached for grant of bail before the Magistrate. The learned Magistrate was not inclined to grant bail. The petitioners approached the Sessions Judge on 29/3/2016. All the petitioners including the petitioner no.4 were granted bail. There is nothing on record to show that the officers, namely, Tahsildar Gadchiroli and Tahsildars of other Tahsils who

proceeded on the spot under the directions of their senior officers had any personal animus against the petitioners. Thus, it is undisputed fact that these officials were only discharging their official duties. The material also refers to the seizure of the petrol-can. Perusal of the seizure memo shows that it was 5 liters plastic-can bearing letters "Namdeo Gadpalliwar, r/o Gadchiroli".

12. Considering all this material referred to above, we find that no fault is committed by the respondents - authorities and the action taken by the respondents – authorities was on assessing the situation prevalent and reaching on a subjective satisfaction, the submission of the learned Counsel that the petitioners are entitled for compensation for the alleged illegal act of respondents – authorities is not acceptable.

13. Considering all the above referred aspects, in our opinion, the writ petition is devoid of any merits and the same deserves to be dismissed. Accordingly, the criminal writ petition is dismissed.

JUDGE

JUDGE

Wadkar