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

Criminal Writ Petition No.932/2016
(Vikrant s/o Pralhadrao Kate .vs. The State of Maharashtra through its Secretary, Mumbai and others.)

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

Mr. S.P. Bhandarkar, Advocate for Petitioners.
Mrs. B.H. Dangre, Government Pleader for Respondent Nos.1 and 3 to 5.
Mrs. Mugdha Chandurkar, Advocate for Respondent No.2.
Mr. Shashank Manohar, Advocate for Respondent No.6.

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CORAM : B.R. Gavai & Kum. Indira Jain, JJ.
DATED : March 06, 2017.

1. The petitioner has approached this Court seeking a direction to respondent nos. 1 to 5 to take cognizance of the complaints made by the petitioner against respondent no.6 and for further direction to lodge an first information report against respondent no.6 for having committed offences punishable under the provisions of Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002 and the Income Tax Act.

2. Mr. Bhandarkar, the learned counsel for the petitioner submits that respondent no.6 who is presently holding the office of the Minister of Sate for Home Department, has indulged into various corrupt practices during the period 1991 and 2003

and purchased huge property. The learned counsel submits that though the petitioner has made complaints to the authorities in the year 2014 and 2015, the authorities under the pressure of respondent no.6, who is the Minister of State, have not inquired into the allegations and given a clean chit to respondent no.6.

3. The learned counsel poses a question as to why a person who is holding an important public office, should feel shy of facing an open enquiry. The learned counsel submits that the politicians must follow the ideal of coming out clean after an thorough enquiry is conducted against them on the allegations made by the citizens. The learned counsel, therefore, submits that this is a fit case wherein this Court should direct respondent nos. 1 to 5- Authorities to conduct an open enquiry into the allegations made by the petitioner.

4. Mr. Manohar, the learned counsel appearing on behalf of respondent no.6 submits that during the period between 1991 and 2003, respondent no.6 who is a qualified Orthopaedics and his wife who is a qualified Gynecologist in addition to working as Medical Officers in the Government Hospital, have also started hospital in the year 1993 and have earned substantial income from their private practice. The learned counsel submits that

all the properties regarding which the allegations have been made, have been purchased during the said period. The learned counsel submits that even the mathematical calculation as made by the petitioner is incorrect. The learned counsel submits that since the details of the income for the said period are not available with respondent no.6, respondent no.6 had made an application to the Income Tax Authorities for providing the income tax returns for the said period. He submits that, however, the Income Tax Authorities have informed respondent no.6 that since at the relevant time there was no on-line system, the record for a period of six years and beyond is not available with them.

5. The learned counsel submits that the petition is politically motivated. It is submitted that the petitioner has made an attempt to even malign the image of respondent no.6 by publishing an article that respondent no.6 has a third child. He submits that as a matter of fact the name of daughter of respondent no.6 has been changed from Jai to Kashmira by following the procedure. The petitioner himself is aware of the same as he has referred to her as "Jai @ Kashmira" in the memo of petition itself. However, knowing this very well, only in order to malign the image of respondent no.6 in the eyes of public, he has indulged into such activities. It is further submitted that the brother of

the petitioner had unsuccessfully contested against the petitioner in the recent elections to the Graduates' Constituency of Maharashtra legislative Council held in the month of February, 2017. It is submitted that the present petition was also filed with a *mala fide* intention since respondent no.6 was to face the elections at that time. It is submitted that the timing of the petition coincides with the election of the respondent no.6 to the Maharashtra Legislative Council.

6. Mrs. Dangre, the learned Government Pleader submits that on the first complaint of the petitioner, discrete enquiry was conducted by the authorities and after an enquiry, no substance has been found into the allegations of the petitioner. She submits that since the second complaint was a repetition of the first complaint, it was not found necessary to again conduct an enquiry.

7. The perusal of the petition itself would reveal that the allegations made by the petitioner are with regard to the purchases made by respondent no.6 during the period 1991 to 2003. An elaborate reply has been filed by respondent no.6 pointing out therein as to how and from what sources he has made those purchases. It is categorically stated in the reply that respondent no.6 and his wife, in addition to being employed as

Medical officers during that period, had also started a hospital namely Vitthal Hospital in the year 1993 and they had earned substantial amount from their private practice. It has been categorically stated that they do not have the income tax record for the said period. Respondent no.6 has also annexed the copies of the communications addressed to him by the Income Tax Authorities, which are replies to his applications made by him for providing the copies of the income tax returns. The communication addressed by the Income Tax Authorities would reveal that the Income Tax Authorities are not possessing the income tax record of respondent no.6, his wife and HUF of respondent no.6 for the said period inasmuch as the record beyond a period of six years is weeded out by the Department.

8. We do not find it necessary to go into the correctness or otherwise of the contentions as raised by respondent no.6 in the reply. However, it is to be noted that for the first time in the year 2014, the petitioner is seeking an enquiry with regard to the acquisitions made by respondent no.6 for the period between 1993 and 2003. Even according to the Income Tax Authorities, a record is not required to be maintained for a period beyond six years. It would have been a different matter had the petitioner made the allegations for the current period. In that event, respondent no.6 could have

very well met the allegations, made by the petitioner and for which period the income tax record would have been available.

9. No doubt that the contentions raised by the learned counsel for the petitioner that a person who is holding a public office must come with a clean chit, are laudable. However, we cannot decide the petition on the ideologies. We have to decide the petition on the basis of the legal position that exists.

10. The question that we will have to ask ourselves is as to when the Income Tax Department itself does not require the record to be maintained for a period beyond six years, would it be appropriate to direct an enquiry for a period which beings 27 years back from today and ends 14 years back from today. If the contention of the petitioner is to be accepted and the prayer as sought by the petitioner is to be granted, then the Court would be opening an Pandora's box. Any person who has a grudge against another person, would come with the allegations, may not be only of 20 years back but 50 years back and following the precedent, we will have to direct an enquiry for the period which ranges beyond 30 years, 40 years and 50 years back and so on.

11. In any case, the complaint as lodged by the petitioner has been investigated by respondent nos. 1 to 5. A categorical reply has been filed on behalf of respondent nos. 1 to 5. It will be appropriate to refer to paras 6,7 and 8 of the reply which read thus:-

> *"6. I say and submit that, the petitioner had filed two complaints before the answering respondent i.e. 1st on 10.12.2014 and 2nd on 30.10.2015. I further say and submit that on perusal of the contents of both the complaints the grounds for complaint are the same and the allegations made by the petitioner are very vague in nature without any documentary proof or any evidence. However, I say and submit that, in pursuance to the complaint dated 10.12.2014, made by the petitioner Deputy Superintendent of Police, Anti Corruption Bureau, Akola has conducted a confidential enquiry and during the course of enquiry it is revealed that the Respondent No.6 is having three brothers. The Respondent No.6 also owns 140 acres of ancestral property out of which 32 acres of land came to be the share of*

Respondent No.6. I further reveal that the Respondent No.6 started a hospital in the name of Vitthal Hospital in the year 1992 for orthopaedic surgery. The enquiry further reveals that the Respondent No.6's wife is also a doctor by profession and they both look after the hospital. I further say and submit that the Respondent No.6 has worked as Medical Officer from April-1992 to March-2004 at District Hospital, Akola. Needless to mention here that during that period private practice was permitted.

7. I further say and submit that in an enquiry it revealed that the properties in the name of the Respondent No.6 and his family members prima facie do not amount to any disproportionate assets and they have the capacity to hold that property based on the sources of their earnings and their ancestral properties.

8. I further say and submit that, the said enquiry report was duly

> *submitted to the office of the answering respondent and the said report revealed that nothing suspicious is transpired and the Respondent No.6 and therefore the then Director of Anti Corruption Bureau on 04.04.2015 have granted permission to close the file and enquiry, which was initiated on the basis of complaint lodged by petitioner."*

12. It could thus be seen that the complaint of the petitioner dated 10.12.2014 has been duly enquired into by the competent authority and no substance has been found into the allegations made therein. Insofar as the second complaint is concerned, it is specifically stated it was a repetition of the first complaint and hence it was not found necessary to inquire into the same.

13. In that view of the matter, we find that the petition as framed and filed, cannot be entertained. Insofar as the ideologies canvassed by the learned counsel for the petitioner are concerned, it is open to the petitioner or his learned counsel to canvass the same before the appropriate forum. While deciding the petition either under Article 226 of the Constitution of India or under Section 482 of the

Code of Criminal Procedure, if we decide the petition on ideologies, we will not be only entering in the arena of the judicial adventurism but judicial terrorism. The petition is, therefore, rejected.

JUDGE **JUDGE**

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