

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

CRIMINAL WRIT PETITION NO. 1278 OF 2017

Badrinath s/o Udaysing Rathod ... **Petitioner**
Age 52 years, Occu: Agri.
R/o N-9, M-2, 133/4, Sant
Dnyaneshwar Nagar, CIDCO,
Aurangabad.

VERSUS

1. The State of Maharashtra,
Through the Police Station
Officer, CIDCO Police Station,
Aurangabad
2. Vijay S/o Shivram Nalawade
Age 43 years, Occu: Nil
R/o Nimbalkar Plaza,
Keshavnagar, Chinchwad Pune,
Tq. & Dist. Pune
3. Mahadeo s/o Ramchandra Deshmukh ... **Respondents**
Age 58 years, Occu: Service,
R/o Mayani Tq. Khatav
Dist. Satara.
4. Megha w/o Vijay Nalawade, ... **Intervenor**
Age 38 years, Occu: Service,
R/o Nimbalkar Plaza,
Keshavnagar, Chinchwad, Pune.

Mr. N. V. Gaware h/for Mr. Gokul M. Shingare, Advocate
for the petitioner.

Mr. B. A. Shinde, APP for the respondent No.1 State

Mr. J. V. Deshpande, Advocate for respondent No.2

Mr. A. K. Bhosale, Advocate for respondent No.3.

Mr. R. P. Deshpande, Advocate for the Intervenor

CORAM : K. L. WADANE, J.

DATE : 17th January, 2018

JUDGMENT:

1. The present petitioner lodged complaint with the Police Station, CIDCO, Aurangabad on 7th March, 2017 alleging that his son Hemant was intending to take admission for MBBS course. Respondent No.2 Vijay Nalawade contacted him on his mobile and asked him to meet at his residence at Pune. Accordingly, the complainant, his brother and other persons visited the house of respondent No.2. The amount for taking admission to MBBS course was settled at Rs.30 lakhs. Accordingly, on 20th July, 2016, the complainant/petitioner went to Chhatisgad, where, one medical college is located and met respondent No.2 Vijay Nalawade. Respondent No.2 accepted Rs.10 lakhs in cash from the complainant and Rs.1.25 lakhs by D.D. On the second day, respondent No.2 again demanded Rs.15 lakhs. On 20th August, 2016, the complainant/petitioner transferred an amount of Rs.10 lakhs by RTGS to the bank account of Respondent No.2. After three days, the complainant went to Chhatisgad and enquired about the admission of his son. At that time, it was informed that admission at Chhatisgad college was closed and respondent No.2 instructed the complainant to approach the Chairman of Medical College

at Mayni, Dist. Satara. Accordingly, the complainant approached to one of the employee of that college namely Mr. Ranade and paid Rs.6,35,000/- by D.D. on 10th October, 2016 and transferred Rs.12 lakhs on 15.10.2016 and Rs.4 lakhs on 17.10.2016 through RTGS to the Bank account of Mr. Ranade. Hence, in all, the complainant has paid an amount of Rs.21,20,000/- to respondent No.2 and Rs.22,35,000/- to respondent No.3. Out of which, respondent No.2, repaid an amount of Rs.4,25,000/- and respondent No.3 also repaid some amount. Thus an amount of Rs.16,95,000/- is due from respondent No.2 and an amount of Rs.6,35,000/- is due from respondent No.3, who is stated to be Chairman of Mayni college.

2. After filing of the complaint, offence came to be registered and the accused persons were arrested. During investigation, wife of respondent No.2 produced an amount of Rs.16,95,000/- in the form of D.D. and on behalf of respondent No.3 cash amount of Rs.6,35,000/- was produced before the Investigating Officer. The aforesaid amount was seized in the crime as per Panchanama.

3. The present petitioner filed application for

interim custody of the amount deposited with the Investigating Officer. The learned Chief Judicial Magistrate, vide order dated 12.07.2017 in Cri. M.A. No. 720/2017, rejected the application. The petitioner has challenged the said order and prayed for interim custody of the amount.

4. Heard Mr. Gaware, the learned counsel appearing for the petitioner, Mr. B. A. Shinde, APP for the respondent No.1 State, Mr. J. V. Deshpande, Advocate for respondent No.2, Mr. A. K. Bhosale, Advocate for respondent No.3 and Mr. R. P. Deshpande, Advocate for the Intervenor.

5. Learned APP has produced on record the report submitted by the Investigating Officer dated 5th October, 2017 which is taken on record and marked 'X' for identification.

6. Meanwhile, wife of respondent presented the revision application before the Sessions Court, Aurangabad bearing Criminal Revision No. 199/2017. As per the directions issued by this Court, the hearing of the criminal revision was expedited and after hearing the both the parties, the revision application filed by the wife of respondent No.2 against the order passed

below Exh. 22 dated 12.07.2017 has been rejected.

7. Mr. Gaware, the learned counsel appearing for the petitioner, during the course of argument, pointed out that some of the amount was paid by the present petitioner by transferring the same from the account of the petitioner to the account of respondent No.2 through RTGS. Similarly, the amount paid to the college of respondent No.3 was also in the form of D.D. and in the form of RTGS, therefore, there is clearcut evidence on record to show that the complaint paid the aforesaid amount to respondent Nos. 2 and 3. Mr. Gaware, the learned counsel further points out the entries from the pass book which shows that some of the amount was transferred to the account of Respondent No.2 by RTGS.

8. From the report of the Investigating Officer, dated 5th October, 2017, it appears that during the investigation, wife of respondent No.2 presented three Demand Drafts, amounting to Rs.16,95,000/- and an amount of Rs.6,35,000/- was produced on behalf of respondent No.3. The investigating officer has no objection to grant interim custody of the cash amount in favour of the present petitioner. Thus, from the

record, prima facie, it appears that respondent Nos. 2 and 3 have unauthorizedly accepted huge amount from the complainant. Mr. Gaware, the learned counsel further submits that the interim custody of the amount be handed over to the petitioner and the petitioner is ready to produce the same before the trial court as and when directed by the Court. Mr. Gaware, the learned counsel further submits that condition to that effect may be imposed.

9. Learned counsel appearing for the intervenor submits that the amount was recovered from the wife of respondent No. 2 which she has collected from the relatives. When specific query was made to the learned counsel for the intervenor, as to why she had not complained to the Superior Police Officer stating that the I.O. had exerted pressure and unauthorizedly compelled her to deliver certain property. It was tried to be suggested on behalf of the intervenor that husband of the intervenor i.e. respondent No.2 was in police custody and therefore no complaint was made. Even assuming for the sake of argument that her contention is correct, still, it was not answered as to why such complaint was not made to the superior officer of Police after release of respondent No.2 on

bail and after submitting the charge sheet. The learned counsel appearing for the intervenor submits that no such complaint was ever made by the intervenor with the superior police official. She has represented herself in the proceeding by way of filing Criminal Revision before the Sessions Court.

10. Looking to the nature of relief claimed by the petitioner and the objections raised on behalf of respondent Nos. 2 & 3 and the intervenor, it is not necessary to discuss each and every aspects of the matter in detail at this stage.

11. In view of the above circumstance, I am of the opinion that during the pendency of the trial before the trial court, the petitioner is entitled for the custody of the amount deposited with the Investigating Officer. Hence following order:

O R D E R

(1) The order dated 12.07.2017 passed by the Judicial Magistrate, First Class, Aurangabad in Criminal M. A. No. 720/2017 is hereby quashed and set aside.

(2) The amount of Rs.23,30,000/- be given to the petitioner on the following conditions.

i. The petitioner shall give bank guarantee of Rs.11,65,000/- and further he shall furnish solvent security for the remaining amount of Rs.11,65,000/- to the satisfaction of the trial court.

ii. The petitioner shall produce the amount as and when ordered by the trial court.

(3) Criminal Writ Petition is accordingly disposed of.

(K. L. WADANE, J.)

JPC