

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4650 OF 2015**

Savan Vijay Pille & Anr

..Petitioners

Vs.

State of Maharashtra & Ors

..Respondents

Mr. Pradeep Havnur a/w Ms Chitra Salunkhe and Ms Radhika Sawant for the Petitioners

Mr. K. V. Saste Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ
DATE : 14th FEBRUARY, 2018**

P.C.

1 The above Writ Petition has been filed for quashing and setting aside of the FIR being No.266 of 2015 registered with the Chembur Police Station for offences punishable under Section 307, 326, 324, 323, 504, 506, 141, 143, 144, 147, 148, 149, 354, 509 and 34 of the Indian Penal Code, 1860. The Petitioners also seek a direction against the Respondent Nos.2 to 4 herein to insert Section 307 of the IPC in the FIR lodged by the Petitioners being No.267 of 2015 and arrest of the accused including unknown accused persons. The Petitioners are also seeking a relief in the nature of directions against the Respondent No.1 to initiate departmental action and initiate contempt of court proceedings against the Respondent Nos.2, 3 and 4 for violating the principles, directives and guidelines laid down in the matter of D. K. Basu Vs. State of West Bengal i.e. the judgment of the Apex Court. Out of

the incident which took place on 7-10-2015, two FIR's were registered, one against the Petitioners being FIR No.266 of 2015 by Ms Jyoti Raut and one at the behest of the Petitioners being FIR No.265 of 2015 which is at the behest of the Petitioner No.1 Savan Pille. The said FIR has been registered for offences punishable under Sections 325, 324, 323, 341, 504 and 34 of the IPC.

2 In so far as the Petitioner No.2 is concerned, he at the relevant time was a juvenile in conflict with law and was therefore tried separately by the Juvenile Justice Board. By judgment and order dated 24-4-2017, the Learned Principal Magistrate Juvenile Justice Board, Dongri acquitted the Petitioner No.2 Akshay Devendra of the offences punishable under Section 307, 326 and 509 of the IPC. The Learned Principal Magistrate however held that it has been proved that the Petitioner No.2 has committed offences punishable under Sections 324, 506, 143, 148 read with 149 of the IPC . The Learned Principal Magistrate accordingly directed the Petitioner No.2 to be released on probation of good conduct on executing a bond of Rs.15,000/- with one surety of the like amount for the good behaviour for the period of one year under Section 18(1)(e) of the Juvenile Justice Act, 2015. A further direction was issued that he be placed under supervision of Prayas for a period of one year for the purpose of taking vocational training.

3 Hence a reading of the operative part of the said judgment and

order of the Learned Principal Magistrate, Juvenile Justice Board, ex facie discloses that though the Petitioner No.2 was acquitted for the offence punishable under Section 307, 326 and 509 of the IPC , the charges under Section 324, 506, 143m 148 and 149 were proved against him. As a consequence of which the consequential directions which have been mentioned in the operative part of the said order passed by the Learned Principal Magistrate came to be issued. Hence it is not as if the Petitioner No.2 was given a clean chit in so far as the offence alleged against the Petitioners were concerned. In view of the order passed by the Learned Principal Magistrate Juvenile Justice Board, the relief of quashing now survives only in respect of the Petitioner No.1.

4 In so far as the instant Petition is concerned, as indicated above the Petitioners have sought quashing of the FIR being No.266 of 2015 and have also sought a direction that the Respondent Nos.2 to 4 be directed to include Section 307 of the IPC. The Petitioners have also sought that action be taken against the alleged erring police officials for illegally detaining the Petitioners in the Police Station which is against the norms of treating the minor accused person. Taking the last ground first, it is on behalf of the police an affidavit has been filed by Shri Dilip Patil, Assistant Police Inspector attached to the Chembur Police Station. In the context of the allegations made in the above Petition, paragraphs 8, 9 and 10 assume importance, the same are

therefore reproduced hereinunder for ready reference.

8. I say that in respect of both the allegations, a detailed representations have been filed by the Petitioners and detailed enquiry was taken place and conducted by the Deputy Commissioner of Police, Zone-VI, Mumbai and he has decided the said representation by his detailed report on 22-3-2016 which clearly shows that there is no substance in the allegations made by the Petitioners.

9. Apart from that it is pertinent to note that on the date of incident, the Petitioner No.2 who is child conflict with law in CR No.266/2015 was immediately sent by the Police Staff from the spot of incident to Rajawadi Hospital at about 22.00 hrs on 6-10-2015 and in Rajawadi Hospital, during the treatment the parents of the Petitioner No.2 were present and in fact, the treatment which was provided by the doctor, has advised for CT Scan, at that time, the patient was met by the parents. After treatment, the Petitioner No.2, was allowed to go with police and the Petitioner No.2 with police and his parents came to the Police Station i.e. Chembur Police Station, at that time, there was huge crowds gathered, therefore after waiting for some time the parents of the Petitioner No.2 left the Police Station and subsequently even the Petitioner No.2 left the Police Station without meeting any police officials. It is pertinent to note that statement of father of the Petitioner No.2 as well as Petitioner No.2 was recorded on 16-2-2016 and 5-1-2016 respectively during the enquiry by the Deputy Commissioner of Police Zone-VI, Mumbai. Hereto annexed and marked as Annexure A Colly are the copies of the statements dated 5-1-2016 and 16-2-2016.

10 I say that on the plaint reading of the statements, it is crystal clear that on the date of incident the juvenile boy was never taken into custody and at no point of time, he was detente, therefore the allegations made by the Petitioners

in the present Petition about his arrest as well as other allegations in para No.3(ii) and (iii) in the Writ Petition are totally false and even the allegations which are made in the grounds of present Petition are also totally baseless and at no point of time the legal issues arose i.e. in respect of constitutional rights or illegal detention as per D. K. Basu's case.

Hence the averments in the said paragraphs 8, 9 and 10 indicate the events which took place on the date of the incident. The said averments indicate that the Deputy Commissioner of Police, Zonal-6 Mumbai conducted an inquiry wherein the statements of the father of the Petitioner No.2 as well as the Petitioner No.2 were recorded on 16-2-2016 and 5-1-2016. It is on the basis of the said statements that the affiant has concluded that it is crystal clear that on the date of incident the Juvenile boy was never taken into custody and at no point of time he was detained, hence the allegations made against the police officers has been denied.

5 In reply to the averments made in the said affidavit of Mr. Dilip Patil, an affidavit in rejoinder filed on behalf of the mother of the Petitioner No.2 Meena Devendra. By the facts stated in paragraphs 4, 5, 6 and 7, the averments made in the affidavit of Mr. Dilip Patil ACP, are sought to be denied. Hence the case of the police as stated in the affidavit filed on behalf of the police is sought to be denied by the affidavit filed on behalf of the Petitioner No.2 by his mother.

6 It is required to be noted that an inquiry was conducted into the allegations made by the Zonal Deputy Commissioner in which inquiry the statements of the father of the Petitioner No.2 and the Petitioner No.2 were recorded before the Zonal Deputy Commissioner. Since the affidavit filed by Mr. Dilip Patil is based on the statements recorded before the Zonal Deputy Commissioner of Police, we have no reason to question the veracity of the said statement recorded as also question the veracity of what has been stated by the said Mr. Dilip Patil in his affidavit, though it may be a word against word. However we refuse to embark upon an exercise which the Petitioners seek this Court to embark vide prayer clause (a).

7 In so far as the second relief of quashing of the charge sheet is concerned qua the Petitioner No.1, in the facts and circumstances as mentioned in the earlier part of this order, wherein there are cross FIRs, we are unable to accede to the said prayer of the Petitioners.

 In so far as third prayer is concerned, namely the incorporation of Section 307 is concerned, the Trial Court is always at liberty to include an additional charge if the material in that regards comes before it. We therefore do not deem it appropriate to issue any direction in that regard at this stage. Hence no relief can be granted to the Petitioner. The above Criminal Writ Petition is accordingly dismissed.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]