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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 5364 OF 2017

Arvind Shantilal Desai

.... Petitioner.

V/s

Senior Inspector of Police
and others

.... Respondents.

Mr. Rajendra Sorankar i/b Mr. Piyush N. Shah for the Petitioner.

Mrs. M.M. Deshmukh, APP for the Respondents/State.

Mr. Rajesh Ghehani a/w Mr. Mahendra Agvekar and Ms. Sujal Vikhana for Respondent Nos. 3 and 4.

**CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.**

DATE: 7th FEBRUARY, 2018

P.C.:-

1] Present Petition is nothing else but an abuse of process of law. This is a glaring example as to how, to settle the dispute over ancestral property, warring brothers drag their unfortunate mother.

2] The Petition is filed by one of the sons of unfortunate lady Sumitra Desai. The allegation in the Petition is that, in the month of January, 2017, Petitioner's mother viz. Sumitra was kidnapped by her son Tushar – Respondent No.3, who is a real brother of the Petitioner. According to the Petitioner, after the said Sumitra was kidnapped, he

made complaint to the police authorities and also went to Bangalore to meet the mother but the Petitioner was not allowed to meet her.

3] Mr. Sorankar, learned Counsel for the Petitioner, submits that the Petitioner approached this Court on account of severe anxiety as to what would have happened to his mother. When, the matter was listed on 11/01/2018, we had requested learned APP to inquire from Madiwala Police Station, Bangalore as to whether Respondent No.4 is voluntarily residing with Respondent No.3 or not.

5] When the matter was listed before this Court on 23/01/2018, learned APP has informed us that the police authorities are not getting cooperation from Karnataka Police. We had therefore adjourned the matter, so as to enable the police authorities to take further steps in the matter.

6] Today, a report is placed on record by learned APP, addressed by Senior Police Inspector, Vakola Police Station, Mumbai dated 06/02/2018.

7] Perusal of the report would reveal that, in pursuance to the orders passed by this Court, one Police Sub-Inspector viz. Aranye, and Police Naik Ashok Kadam were sent to Bangalore. It would further reveal that, the said Police Party from Mumbai went to Madiwala Police Station, Bangalore and took assistance of Police Inspector Boletin. He deputed one lady police constable Hemlata and police

constable Pujari to assist the Mumbai Police Party. From there, they went to residential address of Respondent No.3. The watchman of the Society took them to the residential house of Respondent No.3.

8] The report would further reveal that, Respondent No.3 - Tushar, his son Axit as well as Respondent No.4 - Sumitra were found there. The report further states that, on being inquired, Sumitra Desai stated that she is residing with her son Tushar, his wife and grandson Axit from January, 2017. She further stated that, when in the month of January, 2017, she had gone on her own accord to the house of her eldest son Dharmesh Desai for attending marriage of his son Salil, Respondent No.3 and his wife had both come there. The statement recorded of Sumitra, would reveal that the Petitioner had not attended the said wedding. After wedding ceremony was over, Respondent No.4, since had got bored of staying in Mumbai, decided to go to Bangalore alongwith Respondent No.3. Her statement would further reveal that thereafter, she has been residing at Bangalore with Respondent No.3. Her statement would further reveal that, she has stated that the Petitioner as well as his daughter Heena had come to Bangalore and at that time she had informed them that, she is happily residing at Bangalore and at the moment would continue at Bangalore. She has further stated that, she would come to Mumbai as and when she would desire. She has further stated that, her health is sound and she has no complaints. Respondent No.4 in her own handwriting has written thus :

“I the undersigned Sumitra Desai having
living here since last one year. I am very
happy here and wish to live here only.

Sumitra S. Desai”

The said police report is taken on record and marked “X” for the purpose of identification.

9] It could thus be clearly seen from the statement of Respondent No.4 that, she is residing at Bangalore with Respondent No.3 out of her own desire.

10] Learned Counsel appearing on behalf of the Petitioner urged us to believe that, this was a case of kidnapping. It is difficult to believe that old lady aged 86 years is kidnapped from Mumbai and all the way taken to Bangalore and nobody notices the same.

11] Insofar as the anxiety expressed by learned Counsel for the Petitioner is concerned, we fail to understand that if the circumstances were so grave, as to why it should take period of one year for approaching this Court.

12] In that view of the matter, we have no hesitation to come to the conclusion that the present Petition is nothing else but an attempt to settle the score with brother with whom the Petitioner has disputes.

13] It is further to be noted that on account of such unwarranted Petition, we were required to send Police Officers from Mumbai to Bangalore. Apart from wasting their valuable time, the State was required to unnecessarily incur expenses on their travelling. As it is, everybody is aware that in Mumbai, police machinery is under heavy pressure. Taking out two Officers from police force and sending them to Bangalore for number of days only on account of unfounded apprehension of the Petitioner, we are of the view, needs to be properly compensated.

14] In that view of the matter, Petition is dismissed with costs, which are quantified as under :-

(i) Petitioner is directed to pay an amount of Rs 25,000/- to Mumbai Police Welfare Fund by Demand Draft within a period of one week from today and deposit a receipt thereof in this Court within one week.

(ii) Petitioner is also directed to pay an amount of Rs 75000/- to Tata Memorial Hospital for Cancer by Demand Draft within a period of one week from today and deposit a receipt thereof in this Court within one week.

(iii) If the said receipts of payments are not deposited in this Court within one week, *suo moto* proceedings be initiated against the Petitioner for committing contempt of this Court.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)