

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

CRIMINAL WRIT PETITION NO.68 OF 2017

1. Satyanarayan S/o Shriram Lohiya, age 75 years
2. Vijayprakash S/o Satyanarayan Lohiya, age 42 years

Both agriculturists by occupation and R/o
Nalani Bk. Taluka Bhokardan Dist. Jalna

...Petitioners

Versus

1. The State of Maharashtra
Through : The Secretary,
Home Department, Mantralaya, Mumbai – 32
2. The Superintendent of Police,
Jalna District Jalna
3. Shri N.Y. Antarap,
Police Sub-Inspector,
Police Station, Bhokardan District Jalna.
4. The Inspector,
Police Station in-charge of Police Station,
Bhokardan District Jalna.

...Respondents

Mr. B.R. Waramaa, Advocate for petitioners

Mrs. M.A. Deshpande, A.P.P. for respondents No.1, 2 & 4

Mr. S.J. Salunke, Advocate for respondent No.3

CORAM : PRASANNA B. VARALE

AND

AVINASH G. GHAROTE, JJ.

DATE : 5th September, 2019

J U D G M E N T (Per: Avinash G. Gharote)

1. Rule. Rule made returnable forthwith. By consent of parties, the matter is finally heard. By the present petition, the petitioners, who are father and son duo, seek a writ of mandamus against respondents No.1 & 2 by directing them to initiate departmental action against respondent No.3 for breach of sections 41, 41-A, 41-B, 50, 50-A, 54 and 55-A of Cr.P.C. while effecting their arrest in connection with F.I.R. No. 148/2015 registered with Police Station, Bhokardan District Jalna. The applicants also seek a declaration that their arrest in F.I.R. No. 148/2015 was illegal under Section 60-A of Cr.P.C. and also claim notional compensation of Rs. 1,00,000/-

2. The undisputed facts of the matter are that on a F.I.R. registered in pursuance of an order passed U/S. 156(3) by the J.M.F.C., Bhokardan, in Criminal Misc. Appln.No. 415/2015 filed by one Vishwasrao Bhaskarrao Gadhe, who was operating a fair price shop in village Nalni (Bk.) P.S. Bhokardan Tahsil Jalna, against the petitioners and other persons, namely, (1) Gambhirrao Vyankatrao Jadhav, (2) Mangesh Gambhirrao Jadhav (3) Umesh Gambhirrao Jadhav and (4) Ravindra Murlidhar Jadhav for the offences under Sections 420, 467, 468, 471, 323, 504, 506 read with 34 of I.P.C., the petitioners were informed on cell phone that their statements are to be recorded and were called at P.S. Bhokardan, without informing them about registration of F.I.R. It

is contended that when they reached the police station, they were informed that they were arrested in crime registered on the basis of complaint by said Vishwas Gadhe and the grounds of arrest were not informed to them. In the arrest panchnama dated 18/07/2016 drawn at about 2.30 pm, the information regarding the arrest of the petitioners was shown to have been given to one Vijay Devidasrao Jadhav, who is shown as the neighbour of the petitioners, whereas, in fact, said Vijay Jadhav was relative of one Ravindra Jadhav, who was also arrested on 18/07/2016 alongwith the petitioners. It is further contended that no medical examination was done before and/or after arrest and notice U/S. 41 of Cr.P.C. was also not issued before arrest. Based on the directions as issued by the Hon'ble Apex Court in the case of ***D.K. Basu Vs. State of West Bengal – 1997 (1) SCC 416*** and the consequent Amendment to the Code of Criminal Procedure, the above reliefs have been sought for by the petitioners.

3. Respondent No.3 Shri Nandkishor Yellaya Anatarap, the concerned I.O., has filed his affidavit-in-reply dated 20/03/2017 on record. He has denied the averments in the petition. It is stated by him that crime No. 148/2015 was registered against six accused. Co-accused Gambhirrao, Mangesh and Umesh were arrested on 15/07/2016 and produced

in the Court on the same day, whereupon they were remanded in Magisterial custody and consequently released on bail. He stated that the petitioners, who reside in the same village, as other co-accused must have been aware of the arrest and, as such, themselves surrendered on 18/07/2016, whereupon they were shown to be arrested at 2.30 pm and produced before the J.M.F.C., Bhokardan, at 4.55 pm. No complaint was made by the petitioners before the J.M.F.C., Bhokardan. He states that the arrest of the petitioners was lawful after following with due procedure of law. He further stated that the petitioners have thick relations with Vijay Devidas Jadhav, to whom the information of the arrest was provided and, in fact, he had stood as surety for the petitioners while furnishing bail and had also earlier accompanied the petitioners when they had come to the police station. It is further stated by him that after the order of M.C.R. the police had taken the petitioners to the Rural Hospital at Bhokardan for medical chek-up, whereupon the medical examination of the petitioners was conducted by the doctors of Rural Hospital, Bhokardan. He further stated that there was no violation of provisions on his part. Respondent No.3 had filed his additional affidavit on 10/04/2017, which in sum and substance reiterates the position as stated by him in his earlier affidavit dated 20/03/2017 except for the position that alongwith the later affidavit certain documents were filed as Exh. R 6, which was

surety form demonstrating that Vijay Devidas Jadhav had stood surety for petitioners on 18/07/2016 in the matter of grant of bail and the medical certificate issued by the Medical Officer Class II, Rural Hospital, Bhokardan, on 18/07/2016, in respect of examination of the petitioners.

4. Respondent No.4 Police Inspector, In-charge of Police Station, Bhokardan, has filed his affidavit-in-reply on 07/03/2017, wherein he has contended that, in fact, the petitioners had after registration of F.I.R. on 09/10/2015 reported to the police station before the then I.O. on 18/07/2016 at about 2.30 pm and offered to surrender themselves in the said crime on the pretext that the petitioners and the complainant had entered into a settlement. It is stated that accordingly the petitioners and other accused were shown to be arrested after completing the necessary formalities and giving the intimation of arrest to one Vijay Jadhav, who was the resident of the same village, Nalni (Bk.) Tahsil Bhokardan, of which the petitioners were residents and was also a cousin brother of the co-accused, namely, Ravindra Jadhav and who had accompanied all the accused including the petitioners to the police station on 18/07/2016. It is further stated that said Vijay Jadhav had also stood surety to the petitioners on grant of bail on the next date of hearing i.e. on 19/07/2016 and was, thus, a person, who was closely and intimately associated with the

petitioners and, therefore, there was no violation. It is further contended that all the requirements of law including a Medical Examination were duly complied with.

5. The petitioners have placed on record at Exh. E, the letter dated 18/10/2016 issued by the Assistant Police Inspector, P.S. Bhokardan, under the provisions of the R.T.I. Act, in which letter it has been stated that no medical examination was conducted of the petitioners prior to their arrest and so also no notice under S. 41(1) of Cr.P.C. was issued before arrest. A complaint to this effect was also lodged by petitioner No.1 on 20/10/2016 and 21/10/2016.

6. Based upon the above position, the learned Counsel for the petitioners restricted his argument to the violation of the provision of Section 41-A of Cr.P.C. on basis of the information, which is reflected from the letter dated 18/10/2016 by contending that the mention of Section 41(1) of Cr.P.C. in the said letter has to be construed as section 41-A of Cr.P.C. in the light of the language in paragraph No.3 thereof. The submission of the learned Counsel for the petitioners, is without any merits for the reason that the provisions of Section 41-A of Cr.P.C. come into picture, only where the arrest of a person is not required under the provisions of sub section (1) of Section 41 of Cr.P.C. and not otherwise. A perusal of Section 41(1)(b) and (ba) of Cr.P.C.

demonstrates that in a case where a reasonable complaint is made regarding commission of a cognizable offence punishable with offences for the terms as mentioned therein, the Police Officer would have the power of arrest, and no arguments have been advanced nor any material has been brought on record to demonstrate otherwise. That apart, in connected Criminal Application No. 264 of 2017 filed by petitioner No.1, under Section 482 of Cr.P.C., which we have decided by a separate judgment, petitioner No.1 has placed on record a copy of the chargesheet No. 39/2014, which contains a letter dated 01/12/2016 addressed by the Asstt. Police Inspector, P.S. Bhokardan, to the Sub-Divisional Police Officer, wherein mention is made about suspension of respondent No.3 for not obtaining the permission of the Supdt. of Police, Jalna, in the light of the fact that the offence also included section 420 of I.P.C.

7. Considering the position availing on record, we hold that there is substantial compliance with the referred to provisions of law and, as such, there is no merit in the petition. The petition is, therefore, dismissed, without any order as to costs. Rule stands discharged.

(AVINASH G. GHAROTE, J.) (PRASANNA B. VARALE, J.)

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