

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 90 OF 2019

Mr. Gautam Vijay Bora,
Age 42 years, Occu. Journalism and
Agriculturalist, R/o. 2538, "Has Gulab",
M.G. Road, Ahmednagar.

....Petitioner.

Versus

1. The State of Maharashtra
Through Police Inspector,
Tophkhana Police Station,
Ahmednagar.

2. Mr. Shriniwas Rangnath Awhad,
Age 42 years, Occu. Mandal Adhikari,
Mandal Adhikari Office, Nagpur,
Ahmednagar Collectorate
R/o. Balikashram Road, Ahmednagar,
District Ahmednagar.

....Respondents.

Mr. R.R. Mantri, Advocate for petitioner.

Mr. D.R. Kale, APP for respondent No. 1/State.

Mr. N.V. Gaware, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.K. SONAWANE, JJ.**

DATED : 03/07/2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

2) The proceeding is filed for relief of quashing and setting
aside the F.I.R. No. 469/2018 registered with Topkhana Police

Station, Ahmednagar for offences punishable under sections 353, 332, 323, 504 etc. of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Shrinivas Awhad, who was working as Circle Officer of Revenue Department. He was attached to Nagapur. He has made allegations that on 21.9.2018 he had gone to Ahmednagar Tahsil Office in connection with office work and there at 10.40 a.m. present petitioner approached him and started making inquiry about the 7/12 extract in respect of land of one Chothawe Shivdas Balaji of Navnagapur. He has contended that when he said that there was some mistake while feeding the information in computer and that cannot be corrected by Circle Officer, the petitioner started giving abuses and petitioner virtually assaulted the informant. It is contended that threat of filing false case under Anti Corruption Act was also given and threat of life was given. According to him, on 21.9.2018 he had come to Tahsil Office for training of election process of Burudgaon and the incident took place near the Tahsil Office of Ahmednagar. No reason is given as to why report was not given to police on 21.9.2018 itself when the report is required to be given to Topkhana Police Station Ahmednagar and he was present in Ahmednagar.

3) The learned counsel for petitioner drew the attention of this Court to the record showing that petitioner had applied for

taking mutation entry on the basis of registered will of one deceased. The submissions made and the record show that many properties were mentioned in the will and the application was given to Tahsildar Ahmednagar directly for mutation. Properties were situated at various places like Nalegaon, Savedi, Nagapur, Bolhegaon, Chas, Burhannagar, Kedegaon, Waluj, Bhingar, Maliwada etc. The application was given on 2.4.2018 to Tahsildar and the application was forwarded by Tahsildar to Talathis of all the concerned villages on 3.4.2018. Photocopy of that application is produced by the learned APP and the first informant. Admittedly, the first informant was incharge of village Bolhegaon and copy of will was sent to Bolhegaon also with letter dated 3.4.2018 by the Tahsildar. The record produced shows that the Talathi had made entry of mutation on 25.6.2018 and the matter was placed before the Circle Officer, present first informant. It was in respect of Gat No. 31/1 of village Bolhegaon, but by order dated 2.9.2018 the first informant rejected the application given for mutation by giving reason that there was some discrepancy in the area. There is one more copy of mutation of Bolhegaon which shows that on 28.10.2018 entry made by Talathi was certified, approved by the informant by mentioning that no complaint was received. This entry was sanctioned in respect of Gat No. 31/1 and also 83/2B of Bolhegaon. There is no record whatsoever to show that any information was collected by first informant with regard to so called discrepancy and only after getting satisfied that

there was no such discrepancy, the entry was made. As per the provisions of Succession Act, no probate is required to be obtained in the area which is not situated in metropolitan area. In view of these circumstances, by following routine procedure like publishing notice and calling objections as provided in Maharashtra Land Revenue Code, the mutation entry ought to have been made. The record in respect of other villages show that on the basis of registered will and the application, mutations were immediately made. Only in the present case, the informant refused to sanction the mutation entry and then sanctioned it. These circumstances cannot be ignored as there is specific allegation of the present petitioner against the informant that the informant wanted illegal gratification for making mutation. There is copy of complaint dated 21.9.2018 made by the petitioner to the Collector, Ahmednagar in which he had specifically alleged against the informant that informant was not doing routine job and he was probably expecting illegal gratification, though he was not directly demanding the amount. The applicant had approached Tahsildar on 29.5.2018 also as the mutations were not made on the basis of application given by him on 2.4.2018. On that occasion also, Tahsildar had written to all the concerned to take steps.

4) The papers of investigation show that no inquiry was made with one Chothwe whose name is mentioned by the informant

in F.I.R. dated 22.9.2018. It was submitted for informant that the petitioner is working as agent and he pressurised the officers to make entries when such applications are given by the villagers and Chothwe had filed one such application. There is no record of Chothwe and even the contention in respect of Chothwe shows that there was no reason for him to file application as there was some mistake in computer system in which feeding was done of the information. The circumstance that the F.I.R. was given on 22.9.2018 is sufficient to infer that only after learning about giving of the complaint on 21.9.2018 by informant to District Collector, such step was taken by respondent Avhad. In the F.I.R. it is mentioned that incident took place on the backside of the Tahsil Office but there is no mention that any employee of Tahsil Office had witnessed the incident. Some statements of persons like Rajendra Raut, Circle Officer of Ruichattisi came to be recorded on 24.9.2018 to show that some incident did take place at 10.30 a.m. Their names were not mentioned in the F.I.R. The photocopy of the injury certificate dated 23.9.2018 is produced to show that one contusion and blunt trauma was found on the person of informant. The age of the injury is given as within 72 hours.

5) When a public servant is assaulted in the vicinity of the police station, in ordinary course, he would immediately rush to the police station and give report against such person, but that did not

happen. The F.I.R. came to be given on the next day and there is no reason given in the F.I.R. about the delay. Further, the names of the witnesses were not mentioned in the F.I.R. dated 22.9.2018 and the person who is mentioned in the F.I.R., about whom the petitioner was allegedly making inquiry has not come forward and his statement is not recorded. In ordinary course, the record in respect of that person ought to have been collected in view of specific mention of the name and inquiry ought to have been made with such man.

6) The learned counsel for first informant placed reliance on some observations made in following cases :-

(i) AIR 2005 (SC) 9 [Zandu Pharmaceutical Works Ltd. Vs. Md. Sharaful Haque],

(ii) AIR 2017 (SCW) 2839 [Brijendra Singh and Ors. Vs. State of Rajasthan],

(iii) (2015) 7 SCC 423 [Manik Taneja and Anr. Vs. State of Karnataka and Anr.].

The facts and circumstances of each and every case are always different. In the case reported as **1992 Supp (1) SCC 335 [State of Harayana Vs. Bhajan Lal]** the circumstances in which the Court can exercise the power like quashing of F.I.R. are given. The present matter is one such matter in which the powers need to be exercised by the Court. There are aforesaid circumstances which are supporting the petitioner and giving reason of false implication of the

petitioner. In the result, the petition is allowed. Relief is granted in terms of prayer clause 'A'. Rule is made absolute in those terms.

[K.K. SONAWANE, J.]

[T.V. NALAWADE, J.]

ssc/