

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

903 CRIMINAL WRIT PETITION NO.530 OF 2018

Raghunath S/o Tukaram Sonkamble,
Age 51 years, Occu. Social Worker and Agri.,
R/o Mahatma Phule Colony, Naigaon Bajar,
Tq. Naigaon (Kh), Dist. Nanded ... **Petitioner.**

Versus

1. The State of Maharashtra,
Through Principle Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
3. The Superintendent of Police,
Nanded, District Nanded.
4. Sub-Divisional Police Office,
Biloli, Tq. Biloli, Dist. Nanded.
5. The Police Station Incharge,
Naigaon Bajar, Tq. Naigaon (Kh),
Dist. Nanded.
6. The Zilla Parishad Nanded
Through Chief Executive Officer.
7. The Nagar Panchayat,
Naigaon Bajar, Tq. Naigaon (Kh),
Dist. Nanded.
8. Shri. Vasantrao Balwantrao Chavhan,
Age 60 years, Occu. MLA & Agri.,
R/o Naigaon Bajar, Tq. Naigaon (Kh),
Dist. Nanded. ... **Respondents.**

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Mr. C.R.Thorat, Advocate for Petitioner.

Mr. S.B.Yawalkar, APP for Respondents-State.

Mr. A.B.Shinde, Advocate for Respondent No.6.

Mr. R.N.Dhorde (Senior Counsel) h/f Mr. A.M.Gaikwad,
Advocate for Respondent No.7.

Mr. V.D.Savant, Advocate for Respondent No.8.

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 26th March, 2019

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. The proceeding is filed for giving direction to respondents to register the Crime in accordance with the complaint dated 13.02.2018 given by the petitioner to police. On 13.02.2018, he had approached concerned Police Station and he had made complaint that present Respondent No.8 had illegally transferred by way of lease the property of Village Panchayat in the past for making money and as against each plot he had taken the amount of Rs.5,00,000/- from the transferee. This was done in respect of land Survey No.126 (Gut No.439) of village Naigaon Bazar. Respondent No.8 was Sarpanch of that village in the year 1997-98 and

most of the transactions of transfer were made during that period. The allegations are made that there was no permission of such transfer but only to make money, the transactions were made. After making this complaint on 13.02.2018, he made another complaint to Superintendent of Police and then also to D.I.G. and in those complaints also similar allegations were made.

3. The learned APP submitted that the complaint was referred to P.I. of the concerned Police Station and necessary inquiry was made and the P.I. gave report that the dispute was of civil nature and the matter was closed.

4. Argument was advanced by the learned Senior Counsel Mr. Dhorde for the local body. At the relevant time, it was Village Panchayat but subsequently it became Nagar Panchayat. Even the learned counsel Mr. Savant was allowed to argue for Respondent No.8 as he was Sarpanch during year 1997-98. It was submitted for local Body and Respondent No.8 that necessary permission was obtained from Chief Executive Officer, there was necessary resolution and only after giving advertisement, the transfer was made. This Court had directed the learned APP to see that the initial order of permission is produced on record but today

the learned APP submitted that the file containing permission from the office of Chief Executive Officer was not available. Submission was made that in outward register there was an entry showing that a letter was sent to this Village Panchayat under No.8247 on 16.11.1996 and the entry shows that this was a letter in respect of present village and containing the permission to lay the plots and sell the plots.

5. The submissions made show that there is no record of the permission given of any kind. In any case, even it is presumed that permission was given to Village Panchyat to sell the plots, the record produced shows that plots were given by way of lease and there is such record at least in respect of the plots given to Shaikh Gaisuddin, Shaikh Ayub, Shaikh Habib and others. The area given was 2000 Sq.Ft. to each on lease basis for consideration of Rs.200/- per year as rent and the period mentioned is 33 years. These documents may be of year 2002 but there are documents of year 1997-98 of Respondent No.8 showing that lease documents were executed in favour of other persons like Trambak Dhanaje of the area of 25 x 15 ft. to Shaikh Bashir of similar area and there are many such documents and this

area was also given on lease for similar period for similar rent in the year 1998. It is not the contention of the local body or Respondent No.8 that Chief Executive Officer had given permission to give the land on the basis of lease. The record of notice published for auction also shows that it was informed that Village Panchayat had intention to sell the plot. It needs to be kept in mind that when the plot is sold, more consideration is received and that amount could have been utilized by Village Panchayat for development of village. It was not done but on meagre amount of Rs.200/- per year, lease documents were executed for the period of 33 years in favour of many such persons and they have made big constructions. In this background, the allegations made against Respondent No.8 and the concerned that only to make money, the lease documents were executed and from every transferee the amount of Rs.5,00,000/- was collected, needs to be considered.

6. The learned Senior Counsel appearing for local body submitted that the complaint is given out of some political rivalry. It is true that in most of such cases the political rivals take interest but only due to such rivalry, Court cannot shut the eyes and ignore the criminal activity due to

which public property was disposed of by the persons who were in control. In such cases, thorough investigation needs to be made to ascertain as to who were the persons to whom the property was transferred, as to how the person in power like Sarpanch was benefited due to such transfers, if he had really made some money. It can be ascertained as to whether to the nears and dears of the Sarpanch the plots were given and that way loss was caused to the local body. There is one more circumstance that lease documents were signed by Sarpanch and not by Gram Sevak when Sarpanch cannot execute the documents for Village Panchayat. Strange submission was made for Respondent No.8 that resolution was passed by Village Panchayat to give power to Sarpanch to execute the documents and due to that Sarpanch signed on the documents.

7. The aforesaid circumstances show that the matter was not taken seriously by the concerned. It appears that as Respondent No.8 is MLA, no such seriousness was shown by the concerned. It is unfortunate that the Investigating Agency did not act fairly and did not show the courage.

8. The learned counsel for Respondent No.8 placed reliance on some observations made by Apex Court in the

cases reported as **2007 AIR SCW 4783 (Aleque Padamsee and others)** and **AIR 2008 SC, 907 (Sakiri Vasu Vs. State of U.P. and others)**. On the other hand, the learned counsel for the petitioner placed reliance on observations made by the Apex Court in the case reported as **AIR 2014 SC 187 (Lalita Kumari Vs. Government of U.P. and others)**. The recent decision is of five Hon'ble Judges of Apex Court and relevant observations are as under :

"The use of the word 'shall' in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence. The object of using the word 'shall' in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law. Investigation of offences and prosecution of offenders are the duties of the State. For 'cognizable offences', a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality. Therefore, the context in which the word 'shall' appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these

factors clearly show that the word 'shall' used in Section 154(1) needs to be given its ordinary meaning of being of 'mandatory' character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer-in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. Reading 'shall' as 'may' would be against the Scheme of the Code.

Conducting investigation into an offence after registration of FIR under Section 154 of the Code is the 'procedure established by law' and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law. The plea that if despite the fact that the police officer is not prima-facie satisfied, as regards commission of a cognizable offence and proceeds to register an FIR and carries out an investigation, it would result in putting the liberty of a citizen in jeopardy and therefore police must have liberty to hold preliminary inquiry before registration of FIR goes against the very language of S. 154. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer-in-charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e. to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable

offence must be investigated promptly in accordance with law and all information provided under Section 154 about the commission of a cognizable offence must be registered as an FIR. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. S. 154(3) reveals the intention of the legislature to ensure that no information of commission of a cognizable offence is ignored or not acted upon which would result in unjustified protection of the alleged offender/accused."

9. In view of the law laid down by the Apex Court in the case of *Lalita Kumari* (cited supra), there was no other option open to the police that to register the crime and make investigation but the respondents-police did not do it and so the relief needs to be given to the petitioner.

10. In the result, the Petition is allowed. Relief is granted in terms of prayer clause-A.

11. Rule made absolute in those terms.

12. The learned counsel for Respondent No.8 requested for stay to the order. It is refused.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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