

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.221 OF 2018

Kishore Kakumal Keswani,
aged 56 years, Indian inhabitant,
permanently residing at Radhika
Mahal, Hill Area, Section 17,
Ulhasnagar -3, Dist. Thane Maharashtra. Petitioner

Versus

1. State of Goa
through the Inspector
General of Police, Office of
the Inspector General of
Police, Panaji, Goa.

2. The Senior Inspector of
Police, Anjuna Police Station,
Anjuna, Goa – C.R. No.79/16.
Panaji Goa.

..... Respondents.

Mr. Subhash Jha, with Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents-State.

***Coram : M. S. Sonak &
Nutan D. Sardessai, JJ.***

Reserved on : 16th August, 2019

Pronounced on : 23rd August, 2019

JUDGMENT (Per M. S. Sonak, J)

Heard Mr. Jha with Mr. C. Padgaonkar for the Petitioner and Mr. S. R. Rivankar, learned Public Prosecutor for the Respondents.

2. Rule. Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. The Petitioner, by instituting the present Petition under Article 226 of the Constitution of India, seeks the following substantive reliefs :

“(a) that this Hon'ble Court may be pleased to call for the investigation papers concerning FIR No.79/16 of Anjuna Police Station and after perfunctory and lackadaisical manner in which the investigation so far has been conducted by Anjuna Police Station, Goa may be pleased to direct transfer of investigation of the said case to the Central Bureau of Investigation and/or any other investigating agency and/or Special Investigation Team drawn from investigating personnel from different investigating agencies and they be directed to complete the investigation within such measurable time as this Hon'ble Court may deem fit and proper.

(b) that this Hon'ble Court may be pleased to direct the Respondent No.1 to take action on the administrative side as against Gajanan Prabhudesai, Deputy

Superintendent of Police and other police personnel involved in registration of an absolutely false, frivolous and vexatious FIR, being FIR No.17/16 with Anjuna Police Station as against the Petitioner and the action taken report and/or its conclusion be directed to be placed before this Hon'ble Court within such measurable time as this Hon'ble Court may deem fit and proper;”

4. The Petitioner claims to be a businessman, operating a hotel/ restaurant 'Kailash Parbat' at Lonavala, District Pune. It is the case of the Petitioner that one Anil Jaisinghani has encroached and trespassed upon the Petitioner's property at Ulhasnagar and as a consequence, there is a dispute between the two. On 24th December, 2015, Anil Jaisinghani is alleged to have picked up a quarrel with the Petitioner and issued threats to involve the Petitioner in false criminal cases, in case the Petitioner does not withdraw the complaint made by him against the said Anil Jaisinghani at Ulhasnagar Police Station. It is the case of the Petitioner that Anil Jaisinghani is a history-sheeter and has already been arraigned as an accused in many criminal cases, registered against him by Mumbai, Gujarat, Assam and Goa Police.

5. It is the case of the Petitioner that said Anil Jaisinghani hatched a conspiracy and in pursuance thereof got an FIR No.17/16 registered against one 'Kishor' on 11.02.2017, in which the

complainant, one Tulika Katare, alleged that the “*Kishor*” had committed offences punishable under Sections 328 and 376 of the Indian Penal Code (IPC). It the case of the Petitioner that reference to ‘*Kishor*’ was, in fact, the reference to the Petitioner.

6. It is the case of the Petitioner that on 11.2.2016, when the alleged offences were said to have been committed by the Petitioner, the Petitioner, in fact, was not even present in Goa. The Petitioner applied for an anticipatory bail by producing several evidences in order to establish his alibi and the Courts were pleased not only to grant the Petitioner anticipatory bail, but to make scathing observations against the police authorities for seeking to implicate or involve the Petitioner on false complaints.

7. Mr. Jha, the learned Counsel for the Petitioner has pointed out that the Anjuna Police, after completing the investigation in FIR No.17/16, concluded that the allegations made by Tulika Katare were totally false and, therefore, 'B' summary report was filed in the Court of the learned Judicial Magistrate, First Class, at Mapusa on 19.5.2018.

8. The Petitioner, thereupon, lodged FIR No.79/16 on 12th October, 2016 against Anil Jaisinghani, Tulika Katare and others, alleging that it is they who have committed offences under Sections 384, 420, 465, 467, 468, 471, 474, 109, 114, 115, 182, 193, 195, 199, 200, 201, 205, 120-B, read with Section 34 of IPC.

9. Mr. Jha submits that it is in relation to this FIR No.79/16 that the Petitioner has instituted the present Petition because, according to the Petitioner, the police officers, including, in particular, Deputy Superintendent of Police Gajanan Prabhudessai is involved in the matter and, therefore, there is no sufficient progress in the investigations. Mr. Jha submits that this is a fit case where investigations must be withdrawn from the domain of the local police and handed over to the Central Bureau of Investigation (CBI) or to a Special Investigation Team (SIT), with investigating officers drawn from different investigating agency.

10. Mr. Jha submits that till date, the Respondents have failed to arrest Anil Jaisinghani who is the main accused in the matter. He points out that no steps, or, in any case, no proper steps are being taken to apprehend Anil Jaisinghani and this is mainly because the conspiracy hatched is by Anil Jaisinghani involving, *inter alia*, local police and Deputy Superintendent of Police Gajanan Prabhudessai in particular. He submits that the Code of Criminal Procedure (Cr.P.C.) provides for several steps which can be taken in a case where an accused person is evading arrest. He submits that all such steps are not being taken or, in any case, not being pursued with desired seriousness and, therefore, it is necessary to hand over the investigation to some independent agency, like CBI or SIT.

11. Mr. Jha, on the basis of the reports filed by the Respondents, points out that though a charge-sheet has been filed in the matter, the progress of the investigations or the manner in which the investigations have been conducted thus far, betray lackadaisical approach. He submits that the investigations are being sabotaged by the local police in order to protect the Deputy Superintendent of Police. He submits that the manner in which the false complaint was entertained against the Petitioner and the manner in which the Petitioner was sought to be apprehended at Mumbai, very clearly points out to the collusion between Anil Jaisinghani and the local police. He submits that the investigation is so directed, as to assist the accused persons like Anil Jaisinghani and, therefore, this is a fit case where the investigations should be withdrawn from the domain of the local police and handed over to the CBI or the SIT.

12. Mr. Jha relies upon the cases of *Kashmeri Devi vs. Delhi Administration and another*¹; *Bharati Tamang vs. Union of India*²; and *State of Haryana and ors. vs. Bhajan Lal and ors.*³ in support of his contentions.

13. Mr. Rivankar, learned Public Prosecutor refers to the affidavit-in rejoinder filed by Shri Rajesh Kumar, Deputy Inspector General of Police, in this matter and submits that the investigations have been carried out by the Goa Police in a fair, transparent and efficient manner

1 1988(Supp) SC 482

2 (2013) 15 SCC 578

3 1992 Supp (1) SCC 335

and, therefore, there is no reason to grant the reliefs as prayed for by the Petitioner in this Petition. He points out that several steps have been taken in relation to the arrest of Anil Jaisinghani and his daughter Aniksha Jaisinghani. He points out that the investigations conducted so far, do not reveal any link between the accused persons and the Dy. S.P. Prabhu Dessai. He points out that Dy.S.P. Prabhu Dessai was neither the supervisory officer, nor posted in any of the North District Sub-Division for him to have any nexus with the matter. He points out that the Dy.S.P. Prabhu Dessai was posted at the Police Control Room and the citizens are always at liberty to speak to the officers at the Control Room. He points out that on such basis, the allegations of conspiracy and collusion cannot be made.

14. In any case, Mr. Rivankar points out that the charge-sheet has already been filed against the accused persons on 2/8/2017. Four of the accused persons have already been arrested and thereafter released on bail in pursuance of Court orders. He points out that the Courts have sufficient powers to direct further investigations by resort to the provisions of Section 178 Cr.P.C., if a case for further investigation is indeed made out. He further submits that disciplinary proceedings have been undertaken against certain police officials travelling to Bombay on the basis of air tickets provided by Anil Jaisinghani. He submits that for all these reasons, this Petition is required to be dismissed.

15. Mr. Rivankar relies upon *Secretary, Minor Irrigation & Rural Engg. Services, U.P. & Ors. vs. Sahngoo Ram Arya & Anr.*⁴; *Md. Allauddin Khan vs. The State of Bihar & ors.*⁵ decided by the Hon'ble Apex Court on 15.4.2019 in support of his submissions.

16. We have, with the assistance of Mr. Jha and the learned Public Prosecutor, perused the material on record in this Petition. We agree with Mr. Jha that this is indeed an unfortunate case where the Petitioner was sought to be implicated for offences punishable under Sections 328 and 376 I.P.C. on the complaint of Tulika Katare, who has, in the course of investigations herself admitted that the Petitioner was, in no manner, involved in the commission of these offences and that a conspiracy in this regard was hatched, inter alia, by Anil Jaisinghani, who is presently evading arrest. The question, which arises in this Petition is, however, whether the investigations in the FIR No.79/16 lodged by the Petitioner against Anil Jaisinghani, Tulika Katare, and other accused persons are required to be handed over to the CBI and/or the SIT ?

17. Admittedly, as of now, the Anjuna Police have already filed a charge-sheet against Anil Jaisinghani and several other accused persons, in relation to the FIR 79/16, instituted by the Petitioner. This charge-sheet was filed on 2/8/2017 before the JMFC, Mapusa. Four of the several accused persons named in the charge-sheet had been arrested

4 [2002] 0 Supreme (SC) 625

5 Cri.A.No.675/2019(Arising out of S.L.P. (Cri.)No.1151 of 2018)

and thereafter enlarged on bail.

18. The affidavit filed by Shri Rajesh Kumar, Dy. Inspector General of Police, indicates the steps taken by the local police to arrest Anil Jaisinghani and his daughter. From the steps taken, we cannot conclude that the local police have adopted lackadaisical attitude when it comes to the apprehension of Anil Jaisinghani and his daughter. The affidavit indicates that despite several steps taken since, Anil Jaisinghani could not be apprehended, the Police have filed an application before the JMFC, at Mapusa to issue proclamation against the absconding accused persons, which includes Anil Jaisinghani and others. The affidavit indicates that on 17.7.2019, the JMFC has passed an order for issuing proclamation in respect of accused Anil Jaisinghani and the matter is then posted for 30th August, 2019.

19. Therefore, we see no merit in the contention of Mr. Jha that the Police are not taking any steps whatsoever to arrest Anil Jaisinghani and this inaction on the part of the local police indicates that the local police are colluding with the said Anil Jaisinghani or are part of the conspiracy hatched by Anil Jaisinghani.

20. Mr. Rivankar, learned Public Prosecutor points out that Anil Jaisinghani is, in fact, a history-sheeter, involved in several crimes committed in the States of Maharashtra, Gujarat and Assam, not to mention the State of Goa. He submits that Anil Jaisinghani is required

by various Courts, in all these States. He submits that the Police machinery in all these States is on the look for Anil Jaisinghani. He submits that in these circumstances, the allegations made by the Petitioners that Goa Police are deliberately avoiding to arrest Anil Jaisinghani deserves no acceptance. According to us, if this is the position, we cannot accept the Petitioner's contention that the local police are deliberately avoiding to arrest Anil Jaisinghani and other accused persons.

21. There is an issue of some police officials flying to Bombay to apprehend the Petitioner on the basis of a complaint of Tulika Katare. The investigations, inter alia, revealed that flight tickets for such journey were purchased by Anil Jaisinghani. We agree with Mr. Jha that this was not at all proper. However, the affidavit filed by Deputy Inspector General of Police reveals that disciplinary action has been initiated against these police personnel and the same is pending. Merely because some of the police personnel travelled to Bombay with the tickets purchased by Anil Jaisinghani, that, by itself, is not sufficient to conclude that the entire Goa Police force has colluded with or is involved in the conspiracy hatched by Anil Jaisinghani to malafidely frame or implicate the Petitioner. On such basis, the investigations cannot be transferred to CBI or SIT.

22. In this case, the local police investigated into the complaint made by Tulika Katare and, after detailed investigations, concluded

that the complaint was totally false and made only to implicate the Petitioner. The local police then filed B Summary report before the JMFC. The Goa Police, thereafter, registered the FIR instituted by the Petitioner and after conclusion of the investigations, have filed a detailed charge-sheet, not only against Anil Jaisinghani, but also against 10 other accused persons, who were involved in framing or implicating the Petitioner. From a perusal of the investigation papers, it cannot be said that the Goa Police have acted in lackadaisical manner or the entire police force is involved in the conspiracy hatched by Anil Jaisinghani.

23. In so far as involvement of Dy.S.P. Prabhu Dessai is concerned, Mr. Rivankar has rightly pointed out that merely because some allegation has been made by the Petitioner, there is no reason to implicate this police official. In any case, as pointed out by Mr. Rivankar, the matter is now writ large before the learned JMFC, Mapusa. If the Petitioner is in a position to make out a case that some directions are warranted for further investigation into the conduct of Dy.S.P. Prabhu Dessai, then, there is no reason to presume that such further investigations will not be ordered by the learned JMFC before whom the charge-sheet has been filed.

24. Mr. Rivankar has quite rightly relied upon the decision of the Hon'ble Apex Court in the case of *Md. Alluddin Khan* (supra) to submit that the Magistrates before whom the charge-sheets are filed

have sufficient powers to examine the matters and, if necessary, to direct further investigations. Based upon the material on record, we cannot, at this stage, hold that Dy. S.P. Prabhu Dessai was colluding with Anil Jaisinghani or was a part of the conspiracy hatched by Anil Jaisinghani. We clarify that this will not preclude the learned JMFC from looking into the matter in further details and making appropriate orders, as may be warranted in the facts and circumstances as presented in the matter. All that we say is that this is not a fit case for transfer of investigations to CBI or the SIT.

25. After this matter was fully argued and posted for orders, Mr. C. Padgaonkar, learned Counsel for the Petitioner mentioned this matter on 22nd August, 2019 and applied for leave to file an additional affidavit on behalf of the Petitioner. He submitted that the affidavit is basically to place on record the statement of Mahesh Kerkar, Police Sub-Inspector, attached to Pernem Police Station, which was recorded on 15.02.2017. Since, this motion was not opposed by Mr. S.R. Rivankar, learned Public Prosecutor for the Respondents, we permitted the filing of the additional affidavit on behalf of the Petitioner. We also heard the learned Counsel for the parties. Mr. Rivankar submitted that the statement dated 15.02.2017, relates to the FIR No.17/16, lodged by Tulika Katare against the Petitioner, in which, the investigations have not only been concluded, but no charge-sheet was filed against the Petitioner, because the investigations revealed that the complaint made by Tulika Katare was a false complaint.

26. We have perused the additional affidavit, as well as the statement dated 15.02.2017, which accompanies the same. The statement, in the first place, relates to the investigations in FIR No.17/16, in which matter, the State has already filed for “B” summary. As such, the statement is not so relevant to the determination of the issues raised in the present petition. The present petition relates to the investigations in FIR No.79/16, instituted by the Petitioner, in pursuance of which a charge-sheet has already been filed in the Court of JMFC, Mapusa. Besides, based upon such an affidavit and the statement of Mahesh Kerkar, P.S.I. Attached to Pernem Police Station, we cannot *prima facie* agree with the wholesale allegations made by the Petitioner against the officials of the Police Department, or to conclude that the investigations in FIR No.79/16 have been undertaken by the Goa Police in some biased or partisan manner.

27. In *Kashmeri Devi* (supra), the Hon'ble Supreme Court was concerned with a case of murder and torture by the police officials, which resulted in a custodial death. The facts, in this case, are set out in paragraph 3 of the report. The facts offer no parallel to the present case. In the peculiar facts of the said case, the Hon'ble Apex Court recorded satisfaction that the Police had not acted in forthright manner in investigating the case. The Hon'ble Apex Court recorded that the circumstances available on record *prima facie* showed that effort had been made to protect and shield the guilty officers of the police who

were alleged to have perpetrated the barbaric offence of murdering one Gopi Ram by beating and torturing him. In this case, the investigating agency converted the case from Section 302 IPC to Section 304 IPC on flimsy grounds within hours of the registration of the case, even without waiting for the post-mortem report. It is only in these circumstances that the Hon'ble Apex Court, in the interest of justice, ordered fresh investigation from independent authorities, so that the truth may be known. This decision, according to us, offers no assistance to the Petitioner, taking into consideration the premise that the fact situation in the said decision was completely different from the fact situation in the present case.

28. In *Bharati Tamang* (supra), the Hon'ble Apex Court has held that if the deficiency in investigation or prosecution is visible, or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, the Courts have to deal with the same with an iron hand appropriately within the framework of law. In this case, the Apex Court has held that in order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate case, the Court can even constitute a special investigation team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of prosecution. The Apex Court observed that while entrusting the criminal prosecution with other instrumentalities of

State or by constituting a special investigation team, the High Court or the Supreme Court can also monitor such investigation in order to ensure proper conduct of prosecution. It is observed that in appropriate cases even if the charge-sheet is filed, it is open for the Supreme Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice. In exceptional circumstances, the Court, in order to prevent miscarriage of criminal justice and if it considers necessary, may direct the investigation de novo.

29. The decision in *Bharati Tamang* (supra) merely refers to the circumstances in which the Courts can exercise the power of transferring investigations to independent authorities like CBI or constitute a Special Investigation Team. In the facts of the present case, we are not satisfied that the circumstances warranting transfer of investigation to the CBI or for issuing directions to constitute a Special Investigation Team, have been made out. The circumstances in said case were also entirely different from the circumstances in present case.

30. In *Bharati Tamang* (supra), the Apex Court was concerned with a brutal murder of the President of a political party called “*Akhil Bhartiya Gorkha League*” under the gaze of general public, police and security personnel by the supporters of rival party called “*Gorkha Jan Mukti Morcha*”. The allegations in the said case were that on account of political interference, the State Police had not properly investigated

the brutal offence, in order to protect the real culprits in the matter. The fact situation in the present case is not at all comparable to the fact situation in the case of *Bharati Tamang* (supra).

31. In *State of Haryana and others vs. Bhajan Lal and ors.* (supra), the Hon'ble Apex Court has referred to the powers of the Magistrate in the course of a trial. According to us, this decision is of no assistance to the Petitioner. Rather, we are of the opinion that the Judicial Magistrate can always address the issues raised by the Petitioner, if any case is made out for seeking further investigations into the conduct of any additional persons than the persons named in the charge-sheet already filed in the matter.

32. In the present case, we are conscious that the Petitioner has been deeply hurt by the attempt on the part of Anil Jaisinghani to falsely implicate him in a case which concerns not only his liberty, but also his reputation. However, in this matter, we have to remind ourselves that the Petitioner and Anil Jaisinghani are embroiled into several disputes, which have not only of civil profile, but also a criminal profile. In these circumstances, it is quite natural for the Petitioner to perceive that the investigations are not going in the manner in which they ought to. However, we have to evaluate the material on record with objectivity. We, obviously, cannot be swayed by such considerations. The material on record, does not, at least *prima facie*, suggest that the police authorities are deliberately adopting

lackadaisical approach, in conducting the investigation so as to assist the accused persons. As noted earlier, efforts have been made to apprehend Anil Jaisinghani, who, as we are told, has been declared as an absconder, not only for the purposes of the present case, but also for a number of other cases instituted against him in the States of Maharashtra, Gujarat and Assam. Therefore, on the premise that Anil Jaisinghani is till date not apprehended we cannot conclude that the investigations are proceeding in a biased and partisan manner and that a case has been made out to hand over the investigations to the CBI or constitute a Special Investigation Team to further investigate into the matter.

33. For all the aforesaid reasons, we dismiss this Petition. However, such dismissal should not be construed as expression of any final opinion in the matter, since it is always open to the JMFC, where the charge-sheet has been filed against the accused persons, to consider whether any case is made out for ordering further investigations.

34. Rule is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

Nutan D. Sardesai, J.

M. S. Sonak, J.