

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14173 OF 2018**

Baban Baburao Awatade & Anr.

.. Petitioners

Versus

Shri. Rameshchandra Kisanlal Marda & Ors. .. Respondents

Mr. Manoj A. Patil I/b Mr. Amit Karande for petitioners.

Mr. A.V. Anturkar, Senior Counsel I/b Mr. Ajay A. Joshi for respondent No.6.

Mr. P.P. Pujari, AGP for respondent No.7.

CORAM : K.K. TATED, J.

DATE : 22 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. By this writ petition under Article 227 of the Constitution of India petitioner/original plaintiff is challenging the order dated 20.07.2018 passed by Civil Judge, Senior Division, Pandharpur below Exhibit-45 in Special Civil Suit No.21 of 2013 handing over original agreement for sale dated 01.02.2005 produced by the plaintiff at Exhibit-4/1 to the police authority for sending it to the hand writing experts to verify the signature of Kisanlal Ramchandra Marda.

3. In the present proceedings, initially, the petitioner/original plaintiff filed the Special Civil Suit No.21 of 2013 for specific performance of agreement for sale dated 01.02.2005. During the pendency of the said suit, the police

authority has received the application dated 31.05.2018 from original defendant Nos.5 and 6 stating that the signature of Kisanlal Ramchandra Marda is forged on agreement for sale dated 01.02.2015. On the basis of the said complaint, police started investigation and recorded the statements of 7 persons as stated in paragraph 4 of affidavit in reply filed by State.

“4. I say that on 25/06/2018 to 27.06.2018 Statement of witness (1) Anil Kisanlal Marda (2) Baban Baburao Awatade, (3) Shakil Valliso Kazi (4) Mansoor Saheblal Shaikh (5) Javed Bujurga Khatib (6) Vijaykumar Namdeo Ghadge (7) Pravin Ramchandra Gunge Son of one of the witness Ramchandra Krishna Gunge, were recorded by the Investigation officer. Hereto annexed and marked as **Exhibit-1** is the copy of statements of witness.

4. On the basis of the application dated 31.05.2018, the police authority made application below Exhibit-45 before the trial Court for handing over the original agreement for sale dated 01.02.2005 to verify the signature of Kisanlal Ramchandra Marda from the handwriting expert. That application was allowed by the trial Court by following order :

“1. The original agreement dated 01/02/2005 produced by the plaintiff at Exh.4/1 shall be handed over in sealed envelope to police sub-inspector, City police station, Pandharpur who signed the application/report dated 11.07.2018 Exh.45.

2. The concerned police sub-inspector shall undertake to reproduce this agreement in this court within three months, without fail.

3. The concerned police sub-inspector before obtaining custody of original document shall obtain certified copy of said agreement &

shall submit it on record.

4. Assistant Superintendent of this Court at the time of handing over the original document in the custody of concerned police sub-inspector shall seal envelope of document with his signature and seal of the court.

5. Duly acknowledgement of concerned police sub-inspector be taken as receipt of the document to the police.”

5. The learned Counsel appearing on behalf of petitioner submits that the impugned order dated 20.07.2018 passed by the trial Court is against the principle of natural justice. He submits that the Police Sub Inspector, City police station, Pandharpur have no authority to file such type of application in the Special Civil Suit No.21 of 2013. He submits that the complaint was filed by defendant Nos. 4, 5 and 6 at Mangalveda Police Station. He further submits that even on behalf of State Government Satyajit Ramchandra Adhatrao, Police Sub Inspector, Pandharpur Town Police Station at Solapur had filed affidavit in reply dated 24.10.2018. He submits that it is specifically admitted by the deponent of the said affidavit-in-reply that he started all these investigation as per the direction of Superintendent of Police, Pandharpur Police Station at Solapur. In support of this contention, advocate for petitioner relies on paragraph 2 and 7 of the said affidavit in reply.

6. The learned Counsel for the petitioner further submits that without following the procedure as required by the law, the police authority filed an application below Exhibit-45 before the trial Court and same was permitted by the impugned order. He submits that the Apex Court in the matter of **Lalita Kumari Vs.**

Government of Uttar Pradesh and Ors.¹ Specifically given the guidelines for investigation. In support of this contention he relies on paragraph 106, 107, 108 and 109 of the said authority which reads thus :

“106. Another stimulating argument raised in support of preliminary inquiry is that mandatory registration of FIR's will lead to arbitrary arrest, which will directly be in contravention of Article 21 of the Constitution.

107. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for “anticipatory bail” under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court.

108. It is also relevant to note that in *Joginder Kumar V. State of U.P.* this Court has held that arrest cannot be made by the police in a routine manner. Some important observations are reproduced as under :

“20. ... No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the

1 (2014) 2 SCC 1

person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

109. The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation: and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence."

7. On the basis of these submissions the learned Counsel for the petitioner submits that the impugned order is required to be set aside. He submits that if the present writ petition is not allowed, irreparable loss will cause to the petitioner.

8. The learned Senior Counsel for the respondent vehemently opposed the present writ petition. He submits that there is no substance in the present writ petition and same is required to be dismissed with cost. He submits that by the impugned order, the trial Court directed to hand over the agreement for sale to the police authority in a sealed packet to verify the signature of Kisanlal Ramchandra Marda. Therefore, there is no substance in the present writ petition and same is required to be dismissed with cost.

9. I heard both the sides at length. Bare reading of the order dated 20.07.2018 shows that at the request of Police Sub Inspector, trial Court permitted them to take the original copy of agreement for sale to verify whether the signature of Kisanlal Ramchandra Marda was forged or not through the handwriting expert.

10. Actually, the said agreement for sale dated 01.02.2005 was placed on record by the petitioner/original plaintiff only.

11. Authorities relied upon by the petitioner in the matter of **Lalita Kumari (Supra)** is not applicable in the facts and circumstances of the present case. In that case, the Supreme Court made guidelines for carrying out investigation in criminal matters and also particularly on the point of arrest.

12. Considering the submissions made by the learned Counsel for the parties, and perusing the order dated 20.07.2018, I do not find any reason to interfere in the well reasoned order passed by the trial Court.

13. Hence, writ petition stands rejected.

14. No order as to costs.

15. At this stage, learned Counsel appearing on behalf of petitioner submits that in the present proceedings this Court has already granted ad-interim relief on 29.08.2018. It be continued till 15.03.2019 to enable the petitioner, if he wants to take chance in Higher Court. Same is allowed. Ad-interim relief to continue till 15.03.2019.

(K.K.TATED, J.)