

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 92 OF 2017

Bharat Shankar Jadhav ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Adv Ganesh Mohite for the Petitioner.

Smt. S.D. Shinde, APP for the respondent State.

**CORAM : B.P. DHARMADHIKAKRI &
REVATI MOHITE DERE, JJ.**

DATE : JANUARY 11, 2019

P.C.:

Submission of the petitioner is when the cognizance of the report being lodged by the petitioner was avoided, petitioner approached the court of JMFC at Daund in Case No. 220 of 2014 on 26/9/2014 and pointed out the involvement of the respondents in offence under section 143, 147, 217, 218, 341, 452, 504, 506, 395 of IPC. That court on 10/10/2014 issued order under section 156(3) and then FIR was registered. However, to frustrate this move, respondents thereafter on 14/12/2015 submitted final report and has omitted section 395 of IPC in it. FIR on the basis of which final report has been lodged, is shown to be FIR No. 241 of

2014 and copy of the FIR forming part of final report does not contain any date, or number. The submission of the petitioner is the signature of the petitioner taken earlier has been misused and the antedated FIR appears to have been fabricated.

2. As an illustration of attitude of the respondents, he relies upon the execution of search warrant issued by the trial court after the delay of about 3 months. He therefore, submits that the action needs to be taken only of FIR registered as MCR 23/13 on the strength of the complaint filed before the Magistrate by the petitioner and investigation must be carried out by some other agency.

3. Learned APP is relying upon the final report and submits that as the final report is filed, petitioner at this stage cannot make grievance of present nature.

4. After hearing the respective counsel, we find that the petitioner has specifically in paragraph 8 of his petition pointed out the misuse of his signature and therefore, possible fabrication. Copy of the FIR produced before this court forming part of the final report again does not contain the details like number, date etc. The respondents have chosen not to file any affidavit rebutting the assertion of the petitioner or explaining the facts.

5. As the cognizance is already taken by the police after the order of Magistrate dated 10/10/2014, we find that the final report submitted by the police needs to be examined by that court as part of the criminal Case No. 220 of 2014.

6. On the strength of the material available on record, learned Magistrate can consider whether the final report and FIR filed along with it are fabricated documents or then any investigation has been conducted after the orders dated 10/10/2014 under section 156(3) of Crp.C.

7. We keep all contentions of the petitioner open. We direct the learned JMFC Daund to complete this exercise within three months from the date of communication of this order to him. With these directions, we partly allow and dispose of the petition.

(REVATI MOHITE DERE, J.) (B.P. DHARMADHIKARI, J.)