

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

20 CRIMINAL WRIT PETITION NO.1223 OF 2019

DADASAHEB KUSHABAPU PAWAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH

**APPLN/547/2020 IN WP/1223/2019
WITH APPLN/527/2020 IN WP/1223/2019
APPLN/2846/2019 IN WP/1223/2019
APPLN/3640/2019 IN WP/1223/2019**

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Advocate for Petitioners : Ms.Pradnya Talekar
PP for Respondents-State : Shri D.R.Kale
Advocate for Applicant/Intervenor in Cri.Appln.547 of 2020 :
Shri V.D.Hon, senior counsel i/b. Shri A.D.Ostwal
Advocate for Applicant in Cri.Appln.2846 of 2019 :
Shri V.D.Hon, senior counsel i/b. Shri A.V.Hon

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**CORAM : T.V.NALAWADE &
M.G.SEWLIKAR, JJ.**

DATE: 7th December, 2020

ORDER:-

1. In view of observations made by Hon'ble Apex Court in one matter which was filed by respondent sugar factory, the Court expressed that present matter filed for direction to register crime has become infructuous. The learned counsel for petitioners insisted for continuation of present matter and so hearing was given to the counsel.
2. Ms.Pradnya Talekar, learned counsel for the petitioners

took this Court through the order made by this Court on 10-10-2019 and submitted that only after forming opinion that there was substance in the allegations made by the present petitioners, the Court had made the order and has expressed that the Court was expecting the Police to register the crime and take further action after Police are satisfied. She again took this Court through the facts quoted in paragraph No.3 of the order dated 10-10-2019. She submitted that the scheme, which was floated for the benefit of farmers has been misused by the sugar factory and due to this conduct of the factory, the farmers were in a fix as they could not get benefit of the scheme and also loan as the loan was already taken in their names. She submitted that special treatment was given to this sugar factory by the State Government. In addition to that, the amount of Rs.2,18,00,000/- which was taken in the name of farmers, was directly given to the sugar factory by the State Government under the said scheme.

3. Ms.Talekar, learned counsel for the petitioners drew attention of this Court to the report submitted by Shri Somnath Waghchoure, Sub-Divisional Police Officer, Shirdi, Division Shirdi, to Shri Nishant Katneshwarkar, Chief Standing Counsel, Maharashtra State, Supreme Court, Delhi, dated 20-11-2019.

She submitted that the Police Officer had formed opinion on the basis of record that the Government itself was not interested in recovery of interest @ 6% per annum on the disputed amount from the banks and that way from the sugar factory. She submitted that the Police Officer was influenced by the order made by the Minister of the State Government, which indicates that there was no need of taking any action and due to that the Commissioner of Co-operation had also stopped further proceeding, which was there for taking the action. She submitted that when the sugar factory had given list of the share holders, which contains more than 10,000 share holders for getting benefit of the scheme, the Police Officer accepted the contention of the sugar factory that the sugar factory had no intention to pass on the amounts directly to the farmers.

4. Ms.Talekar, learned counsel for the petitioners referred to the case, which is produced by her, cited as *2019 SCC Online Bom. 1676 (Surinder Mohan Arora Vs. Maharashtra State Co-operative Bank Ltd.)*. She submitted that in similar circumstances, when the Investigating Officer had not registered crime, this Court at Principal Seat had directed the investigating agency to register the crime. The Judgment of the Bombay High Court in the aforesaid case was challenged by filing proceedings

in the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed that proceedings. She took this Court through paragraph No.21 of the Judgment of this Court in the aforesaid case in which the provisions of Chapter-XII of the Code of Criminal Procedure are discussed which includes the procedure for registration of crime and making investigation thereafter. She submits that sum and substance of the Judgment of this Court at Principal Seat, which is referred in the present case, is that without registration of any crime, the Police Officer could not form opinion that no offence is made out.

5. As against the aforesaid submissions of learned counsel for the petitioners, Shri A.D.Ostwal, learned counsel for the intervenor submits that in the said matter, closure report has been filed by the Police. Ms.Talekar, learned counsel for the petitioners submits that the said closure report is under consideration and objection is filed to the closure report.

6. Ms.Talekar, learned counsel for the petitioners submits that under Section 482 of the Code of Criminal Procedure, this Court has ample power to see that when there is abuse of process of law and when the interest of justice requires, appropriate directions are given to see that interest of justice is

served. She submitted that the Hon'ble Supreme Court in the present matter has granted liberty to challenge the report of the nature mentioned in the order of the Hon'ble Supreme Court by filing appropriate proceedings, but she is in a fix. But, she submits that the right forum is again High Court. She submits that report of such nature as mentioned in the order of the Hon'ble Supreme Court ought to have been filed in the Sessions Court.

7. Ms.Talekar, learned counsel for the petitioners submits that she may be informed as to whether she should challenge the closure report in this Court or in the Sessions Court. Even after giving hearing for about one hour, learned counsel for the petitioners submits that more hearing needs to be given to her. She submits that this Court may express that the Court's hands are tied due to order made by the Hon'ble Supreme Court.

8. Ms.Talekar, learned counsel for the petitioners tried to show some observations made by this Court against the same sugar factory in Criminal Writ Petition No.1814 of 2018 (*Arun S/o. Punjaji Kadu Vs. The State of Maharashtra and another*). However, that decision has nothing to do with the present matter. Such circumstances cannot be considered as relevant in

the matter like present one.

9. In the present proceedings following relief is claimed:

“A) To direct the respondents to register FIR against the persons involved in commission of crime in light of complaint made by the petitioners by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be.”

10. After hearing the learned counsel for the petitioners, this Court had passed order on 10-10-2019 in which this Court had expressed that the crime can be registered against the sugar factory and further action needs to be taken. The order made by this Court on 10-10-2019 was challenged by the sugar factory by filing Special Leave Petition (Criminal) Diary No(s).37823 of 2019, which has been subsequently numbered as Special Leave to Appeal (Cri.) No(s). 10053 of 2019. The Hon’ble Supreme Court has passed some orders in the same proceedings and one order was passed on 29-11-2019, which is as under:

“ORDER

On 4th November, 2019, while issuing notice, the following order was passed :

“Permission to file special leave petition is granted.

Applications for exemption from filing certified copy of the impugned judgment and exemption from filing O.T are allowed.

Issue notice on the special leave petition as well as on the prayer for interim relief returnable within three weeks.

In the meantime, we request the investigating officer to carry on the investigation. It shall be open for the investigating officer to decide on the basis of the material collected during investigation as to whether the charge-sheet shall be filed under Section 173(2) Cr.P.C. or to file report closing the matter.”

Pursuant to the above order, the state has filed additional documents wherein the Investigation Officer has filed a report indicating that no criminal case is made out.

In view of the above, this petition has become infructuous. The special leave petition is accordingly dismissed as having become infructuous.

In case the respondents have any objection to the report, they may take appropriate action in accordance with law.

Pending application, if any, also stands disposed of.”

11. In view of the nature of the order passed by the Hon'ble Supreme Court as above, this Court passed one order on 02-03-2020 and made observations in paragraph Nos.4 and 5 of that order, which read as under:

"4. The learned counsel for the petitioners brought to notice of this Court that even after giving of direction to register the crime, by this Court and Apex Court, the crime was not registered. The learned counsel for the petitioners submitted that though the crime was not registered, some report was prepared by the police and it was submitted in the Hon'ble Apex Court in aforesaid proceeding. The learned counsel for petitioner submitted that such report could not have been filed in any Court as the crime was not in fact registered. Learned counsel submitted that though in the order dated 29.11.2019 liberty is given to present petitioners to challenge that report, the report cannot be challenged as the petitioners will not get any opportunity to challenge that report as that report cannot be filed under Section 173 of the Code of Criminal Procedure. The learned counsel then submitted that in view of these circumstances, the petitioner wants to file application for clarification in Hon'ble Supreme Court.

5. In view of order made by the Hon'ble Apex Court on 29.11.2019 which is quoted above and aforesaid submission made by the learned counsel for petitioner, this Court is giving time to the petitioner."

12. It appears that after passing the order dated 02-03-2020 by this Court, proceeding was filed, which was given number as Miscellaneous Application No.1592 of 2020 in SLP (Cri.)No.10053 of 2019 in the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed of the said proceeding on 30-09-2020 by passing the following order:-

"ORDER

The Court is convened through Video Conferencing.

Having heard the learned counsel appearing for the parties and carefully perusing the material available on record, we find no merit in the Interlocutory Application No. 77587 of 2020 filed by Respondent No. 1 seeking clarification of Order dated 29-11-2019 passed by this Court.

The Interlocutory Application is, accordingly, dismissed.

Miscellaneous Application also stands disposed of."

13. The aforesaid order made by the Hon'ble Supreme Court shows that the proceeding filed to challenge the order made by this Court was disposed of by the Hon'ble Supreme Court by observing that the Investigating Officer has filed report indicating that no case is made out and so petition itself had become infructuous. In the same order, the Hon'ble Supreme Court has expressed that if the respondents have objection to the report,

appropriate action may be taken in accordance with law.

14. In view of the relief which was claimed in the present matter, the order made by this Court on 10-10-2019 and the aforesaid order of the Hon'ble Supreme Court dated 29-11-2019, this Court has no other alternative but to hold that nothing remains in the present matter. The submissions made by Ms.Talekar, learned counsel for the petitioners that this Court may direct the petitioners to go either to the Sessions Court to challenge the report or allow her to challenge the report in this Court, cannot be accepted by this Court.

15. The observations made by this Court at principal seat in *Surinder Mohan Arora* (supra) can be of no help to the petitioners in the present matter in view of the circumstances of the present matter and the aforesaid order passed by the Hon'ble Supreme Court. In the result, the writ petition stands disposed of as infructuous. All the applications filed in the writ petition and pending are also disposed of.

(**M.G.SEWLIKAR**)
JUDGE

(**T.V.NALAWADE**)
JUDGE

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