

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO.1265 OF 2017

Kedar S/o Jaynarayan Malpani,
Age: 37 yrs, Occu: Service/agri,
R/o. Peth Galli, Ambad,
Tq: Ambad, Dist: Jalna.

... PETITIONER
(Ori. Complainant)

Versus

- 1] The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
- 2] Superintendent of Police,
SP Office, Jalna,
Jalna, Dist. Jalna.
- 3] The Police Inspector,
Ambad Police Station,
Ambad, Dist: Jalna.

... RESPONDENTS

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Mr. M. P. Tripathi, h/f Mr. R. R. Chandak & Mr. P. K. Lakhotiya, Advocate for
Petitioner.

Mr. G. O. Wattamwar, APP for Respondents.

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

DATE : 09th December, 2020.

ORDER: (Per T. V. Nalawade, J.)

. The petition is filed for giving direction to the Respondent, police to register FIR against responsible persons on the basis of complaint given by the Petitioner on 9th June, 2016. The request is also made to see that the investigation is made through CID.

2 The present matter was filed in this Court in the month of August 2017. No interest was shown by the counsel for Petitioner to prosecute the matter. This Court had given general directions to the staff to see that all the matters, which are pending in board department are listed before this Court even if there are objections in the matters. This Court has noticed that many matters are filed and nobody has turned up to prosecute the matter for many years. This matter came before this Court first time on 14th October, 2020. On that day, Mr.Mule, learned counsel holding for advocate on record Mr. Chandak sought time and so time was given to him. It was made clear that he was to argue the matter to make out the case for issuing notice and for admission purpose. Today, the learned counsel for Petitioner was heard.

3 In the complaint dated 9th June, 2016, addressed to Police Inspector Ambad, Taluka Ambad, District Jalna, the Petitioner has

made allegations that in one incident dated 22nd May, 2016, Ramesh Rathi and Nitin Rathi gave severe beating to him and they said that there was some video recording with them against the Petitioner. It is contended that the Petitioner was working in the shop of these two persons and they were saying that he had committed theft in their shop. It is contended that they had insisted that he should handover cash amount and all the gold ornaments, which he must have kept in bank.

4 It is the contention of the Petitioner that on 19th May, 2016, the aforesaid two persons had taken the cash, which he had kept with Rathi Jewelers. It is contended that they had obtained his signatures on blank papers and on stamps and they had taken three gold rings, one gold chain and bracelet from him. It is contended that they had obtained his signatures on T.T. Form of his Maruti Alto car under threat that they would finish him and his family members. It is contended that on 23rd May, 2016 they insisted that he should transfer his property to them.

5 It is the contention of the Petitioner that due to threats given to him and due to fear, he did not approach police. It is contended that his family was taken to police station and they were virtually detained there for some time. It is contended that in the police

station men of aforesaid two persons were present. It is contended that they had already given complaint against him and they were saying that for withdrawal of complaint he should give Rs.40,00,000/- to them. It is his contention that he promised to give Rs.33,36,000/- on 9th June, 2016 to the aforesaid two persons in the presence of many persons. It is contended that he is deceived and his money and gold ornaments are taken by the aforesaid two persons and so action should be taken against them.

6 The contents of the complaint show that the Petitioner mentions one report given to police against him. Today, submissions were made and copy of charge-sheet and copies of papers of investigation were produced. The papers show that on the basis of report given by Ramesh Rathi, crime was registered at C.R. No.95 of 2016 against present Petitioner, Kedar Malpani and five other persons. In the FIR, allegations were made against six persons that all the accused were working in the shop of the informant to attend the customers and as they had suspicion that they were stealing money from the cash box of the shop, watch was kept on them. CCTV system was used and then they realized that present Petitioner, Kedar was deleting some data from the computer in respect of transactions and he was taking away that money from the cash box. This he was doing when the owner used to go away from the shop for some work.

It was noticed that daily they were stealing cash of rupees twenty thousand to twenty-five thousand and this was done by them for about three to four years. In view of these allegations, crime was registered for the offences punishable under Section 381, 406, 408, 411 read with 34 of the Indian Penal Code. After making investigation, charge-sheet is also filed.

7 This Court has carefully gone through the record of the said matter, which shows that CCTV system was fixed there. There are statements showing that there was discrepancy in the account and then by keeping watch the theft was detected. The papers include statement given by the present Petitioner under Section 27 of the Evidence Act and it shows that cash of Rs.3,00,000/- was recovered on the basis of statement on 12th June, 2016. There is statement of other accused and on that basis the cash amount of Rs.40,000/- was recovered. The account extracts in respect of the shop are there with the charge-sheet and the muster of the employees is also there. The hard-disk in which the incidents were recorded is also taken over by the police.

8 When there is record of aforesaid nature, the record shows that the present Petitioner came to be arrested on 9th June, 2016 and on the same day he gave report against his employer to

police. It appears that as the matter was not settled, crime was registered and the Petitioner was arrested and then he took such stand. There is no record produced to show that he had sustained fracture injury. When he was arrested on 9th June, 2016, in ordinary course, his medical examination must have been done. However, he has made allegations that he was assaulted on 22nd May, 2016, much prior to the date of registration of crime. The crime was registered on 9th June, 2016. These circumstances show that there is no material at all with the Petitioner to substantiate his contention and that is why the present matter was not pressed after filing it in the Court. The Petitioner apparently wants to pressurize other side by seeking relief of registration of crime on the basis of so-called complaint dated 9th June, 2016. Due to these circumstances, this Court holds that it will be abuse of process of law if such direction is given. In the result, the petition stands dismissed.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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