

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

906 CRIMINAL WRIT PETITION NO.38 OF 2020

Kedar Munjaji Wankar,
Age; 32 years, Occ; Business,
R/o; Sonpeth, District; Parbhani.

...Petitioner

VERSUS

1. The State of Maharashtra,
Through in-charge of Sonpeth
Police Station,
District; Parbhani.
2. Mahesh Punjaji Patil,
Age; 44 years, Occ; Business,
R/o; Bhoigalli, Sonpeth,
Taluka Sonpeth,
District; Parbhani.
3. S.L. Sitikar,
Investigating Officer,
Sonpeth Police Station,
Sonpeth, District; Parbhani. **...Abated** ...Respondents

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Advocate for Petitioner : Mr.Salok Amol M. and Mr.Bhosle Mahesh K.
APP for Respondent No. 1-State : Mrs. Geeta L. Deshpande
Advocate for Respondent No. 2 : Mr.Gujrathi Pushpak U.

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CORAM : SURENDRA P.TAVADE , J.

DATE : 11th August, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of

learned counsel for both the parties, heard finally at admission stage.

2. The original informant in RCC No. 59 of 2012 registered at Sonpeth J.M.F.C.Court, District Parbhani has preferred this writ petition and prayed that the seized mobile be sent to the forensic lab for analysis to prove the charge against respondent Nos. 2 and 3. It is contended that the petitioner had lodged FIR against respondent No. 2 which was registered with Sonpeth Police Station and on the basis of said FIR the investigation was carried out. The Investigating Officer had seized the mobile, but it was not sent to the Court along with charge-sheet. The charge-sheet is filed in RCC No. 59 of 2012. There were two SIM cards in the seized mobile, ultimately on the request of the informant the Investigating Officer produced the seized mobile in the Court on 06.08.2019. Thereafter, the informant has filed an application for sending it to the forensic lab for analysis as per the application (Exh.-C) 'page No. 58 of the petition'. The Trial Court passed an order directing to the Investigating Officer to submit his explanation, but the said explanation was not furnished by the Investigating Officer. Thus, the petitioner has preferred another application (Exh.-E) of this petition, wherein, the trial Court passed the following order :

"Read the application and say thereon. Perused the record, the prosecution have to adduce evidence as they

required at their efforts. Hence Ld. A.P.P. is hereby directed to consulted with P.I. of concern P.S. and do needful instead of moving the Court to collect evidence.”

2. The above impugned order is challenged in the present petition.

3. Heard learned counsel for the petitioner, learned APP for respondent No. 1 and the learned counsel for respondent No. 2.

4. Learned APP submitted that respondent No. 2 is facing charge under Sections 67 of the Information and Technology Act read with Section 294 of the Indian Penal Code. According to FIR, the petitioner received messages from respondent No. 2 which were objectionable. The said allegation could be proved only with the help of forensic report of mobile phone. Hence the analysis of mobile phone is required. The above submissions are adopted by the learned APP on behalf of the State (R-1).

5. On the other hand, learned counsel for respondent No. 2 submitted that the order of the trial Court is perfectly legal as Court cannot collect evidence on behalf of party and it is the sole responsibility of the Investigating Officer to collect the evidence and produce it along with the charge-sheet. He also submitted that at the

time of filing of charge-sheet the Court staff did not take pain to verify whether any article is seized by the Investigating Officer. So the mobile was not produced in the Court till 08th August, 2019. He also submitted that charge-sheet is filed in the 2012 and since 2012 nothing is done by the prosecution or the Investigating Officer for sending mobile to the forensic lab. Hence petition has no merit, it may be dismissed.

6. On hearing parties, it is crystal clear that the petitioner has lodged FIR and on that basis Crime No. 3005 of 2011 was registered against respondent No. 2 for the offence punishable under Section 67 of the Information and Technology read with Section 294 of the Indian Penal Code.

7. The crux of the charge is that the petitioner received some messages from respondent No. 2, which are objectionable and said fact could be proved through extractions of such messages from mobile phone. But the fact remains on record, that the petitioner had received messages from respondent No. 2 on his mobile. The said fact could be proved only through the forensic examination of mobile phone of either of the respondent or the petitioner. The Investigating Officer has seized the mobile phone in the course of investigation but he did not produce it in the Court. Ultimately it is produced in the

Court at the instance of petitioner.

8. It appears from record that the Investigating Officer has callous and he did not send to mobile to the forensic lab for examination. The petitioner cannot be blamed for the same. No doubt, the J.M.F.C. has also shifted his burden on the police officer. He could have direct the Investigating Officer to send the mobile phone for analysis at forensic lab instead, he directed the learned APP to get all these things done from the investigating officer of concerned police station. Ultimately it is the duty of the Magistrate to see that all material is brought before the Court and whether it is in proper form.

9. The Magistrate has failed in directing the Investigating Officer to send the mobile phone to forensic lab for examination, therefore, the order of the Magistrate is not proper and legal therefore, it is required to be set aside. The impugned orders passed by the learned Magistrate dated 04.09.2019 and dated 01.11.2019 are set aside. The petition is required to be allowed. Hence the following order :

ORDER

- i) Petition is allowed.
- ii) The impugned orders passed by the Learned

Magistrate dated 04.09.2019 and 01.11.2019 are set aside.

iii) The Judicial Magistrate First Class, Sonpeth, District Parbhani, is hereby directed to send the seized mobile phone in RCC No. 59 of 2012 to the forensic lab for analysis.

10. Rule is made absolute.

(SURENDRA P.TAVADE)
JUDGE

mahajansb/