

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

CRIMINAL WRIT PETITION NO.463 OF 2020

Mahadeo S/o Kondiba Shinde
Age 64 years, Occ : Pensioner
R/o Rameshwar Road, Sautada
Tq.Patoda, Dist.Beed.

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through its Secretary,
Department of Home Affairs
Mantralaya, Mumbai.

2] The Superintendent of Police,
Beed.

3] The Police Inspector,
Shivaji Nagar Police Station,
Beed, Dist.Beed.

.. RESPONDENTS

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Shri G.R.Syed, Advocate for petitioner
Smt.R.P.Gaur, A.P.P. for respondents-State.

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CORAM : MANGESH S. PATIL, J.
DATE : 03.02.2021

ORAL JUDGMENT :-

Heard. Rule. The rule is made returnable forthwith. The learned A.P.P. waives service for the respondents-State. With the consent of both sides, matter is heard finally at the stage of admission.

2] Not satisfied with the investigation the informant approached this Court by filing Criminal Writ Petition No.533/2019 seeking direction to the investigating agency to carry out further investigation. By order dated 5/4/2019 this Court disposed of the Writ Petition with following observations :

“3] Prayer is made for giving direction to respondent, Investigating Agency and the State to make de-novo investigation in Crime No.758 of 2018 registered with Shivaji Nagar Police Station, District Beed. It appears that the petitioner is not satisfied with the investigation made and he wants to show that there is some more material which needs to be collected in the matter. As after making investigation, the Investigating Agency filed the charge sheet against the accused for the offences punishable under Sections 498-A, 306, 323, 504, 506 read with Section 34 of the IPC and the case is committed to the Court of Sessions, the Trial Court/Sessions Court has ample powers and if the Trial Court finds that some material needs to be brought on record, it can take steps suo motu also. In other cases, the investigating agency can request the Court for permission to make further investigation of the matter and that recourse also can be used by the present petitioner by applying through the Prosecutor appointed in the said case.”

3] Pursuant to these observations, the petitioner approached the trial Court by filing application (Exh.26) counter signed by the A.P.P. seeking a direction for further investigation.

4] By the impugned order the learned Assistant Sessions Judge rejected the application primarily on the ground that the application was not filed by the investigating agency.

5] There is also a sentence appearing in the impugned order at the fag end which reads thus :

“Unless and until complainant brings such material before this Court, this Court is not in a position to issue the direction to the police for re-investigation of the case”.

But conspicuously at no earlier place the learned Judge has made any observation touching this aspect as to what was being sought to be brought on record by the petitioner.

6] It is thus quite apparent that inspite of observations of this Court in Criminal Writ Petition No.533/2019 the learned Assistant Sessions Judge has erroneously rejected petitioner's application (Exh.26) for the sole reason that the application was not coming from the investigating agency. The observation is clearly erroneous and in utter disregard of the order of this Court (supra) and is liable to be quashed and set aside.

7] The Writ Petition is allowed. The impugned order is quashed and set aside. The learned Assistant Sessions Judge shall now decide the application (Exh.26) afresh on its own merits and shall not reject it only on the ground that it has not been filed by the investigating agency.

8] The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]