

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

CRIMINAL WRIT PETITION NO.1068 OF 2020

TUSHAR S/O. BHAGWAN BADGUJAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioners : Dr. Swapnil D. Tawshikar
APP for Respondent No.1 : Shri S. J. Salgare
Advocate for Respondent No.2 : Shri A. V. Patil
...

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

DATE : 06TH APRIL, 2021

PER COURT :

1. Leave to amend prayer clause (C). Amendment to be carried out forthwith.

2. On 30-03-2021, we had passed the following order :

"1. We have perused the statement of the victim recorded on 03.08.2020 by the learned Judicial Magistrate, First Class, Amalner. This Court, vide order dated 20.01.2021, had directed the said learned Judge to submit a report in a sealed envelope. The said envelope has still not reached us, though we had passed an order on 20.01.2021. As such, the learned Registrar (Judicial) is directed to communicate to the learned Principal District Judge, Jalgaon, to call for an explanation from the learned Judicial Magistrate, First Class, Amalner, as to why the report has still not been tendered to this Court.

2. The learned Prosecutor has placed on record a communication received by him, dated 06.02.2021 from the Assistant Police Inspector, Dharangaon Police Station along with the statement of the victim recorded under section 164 of the Cr.P.C. on 03.08.2020 by the learned Judicial Magistrate, First Class, Amalner. The compilation of five pages is taken on record and marked collectively as

"X-1", for identification.

3. With the assistance of the learned counsel for the Sr.No.3079, page no.228. The registration date is 19.04.2004 and the date of birth is 16.04.2002. The name of the new born female child is Vaishnavi and the name of the father is Sachin Rajmalji Malu. Birth place is shown as Tara Hospital, Jalgaon. Three Officers have signed below the said certificate. The school leaving certificate of the victim issued by Raja Shivchhatrapati Shikshan Prasarak Mandal, Dharangaon shows the date of birth being 16.04.2002 and the second certificate issued by L.H. Patil English Medium School also indicates the same date of birth.

4. Contrary to the above, the learned Prosecutor has tendered before us a copy of the birth certificate issued by Jalgaon City Municipal Corporation of Jalgaon. Following entries match with the certificate at page no.15 before us, referred to hereinabove;viz. the register period 2003/2, register no.10541, Sr.No.3079, page number is 228, name of the female child is "Vaishnavi", place of birth is Tara Hospital, Jalgaon and the name of the father is Sachin Rajmalji Malu. The only difference is that the registration date in the document before us at page 15 is 19.04.2002 and registration date in the certificate placed before us by the learned Prosecutor is 19.04.2003. The date of birth also differs as being 16.04.2003. This copy supplied to us by the learned Prosecutor is marked as "X-2", for identification.

5. It is, therefore, clear before us, at this prima facie stage,s that except the registration date and date of birth showing the year 2003 instead of 2002, rest of the information matches in the said two documents.

6. We, therefore, call upon the learned Prosecutor to direct the Deputy Commissioner of Jalgaon City Municipal Corporation, Jalgaon or such Senior Officer, Incharge of the Department registering the birth and death of persons, to produce before us the Register no.228, for the period 2003/2, in original form.

7. List this matter in the passing orders category on 6th April, 2021. "

3. Today, the learned prosecutor has placed before us the

original register of births for the period 2003/2, Register No.10541, page No.228, Sr. No. 3079, which indicates the birth of a female child, by name Vaishnavi, on 16-04-2003. The details as regards the parents, matches. We find that the petitioners have a certificate at page No.15 of the petition paper book, which indicates date of birth as 16-04-2002 and the registration date as being 19-04-2002. Rest of the details of the certificate match with the original, except the year of birth.

4. Keeping the fact situation as above in focus, we clearly see that at least two different birth certificates may have been issued by the Municipal Corporation of the City of Jalgaon. All entries, except the year of birth, the registration date and the date of issuance of the certificate, match. It is glaring that the date of birth in the two certificates of the same girl child indicate 16-04-2002 and 16-04-2003. This makes a world of a difference for the petitioner as the victim has stated that she had got married with the petitioner, though forcibly, and if she is 18 years of age, the gravity of the offence would reduce, in comparison to the same girl being 17 years of age at the time of the commission of the offence. This, of course, would be a subject matter of the trial.

5. Shri Patil, the learned advocate representing respondent No.2 submits that the birth certificate at page No.15 of the paper book is a forged document, which was in the custody of the

petitioners and they have brought it on record. It is his submission that this certificate has not been issued by the Municipal Corporation. We direct that this aspect shall be considered in the enquiry, to be initiated by the Municipal Commissioner of Jalgaon.

6. We have no hesitation in observing that one of the two certificates is bogus and for which the Commissioner of the Municipal Corporation of City of Jalgaon needs to initiate an enquiry into this aspect and by fixing the responsibility on the errant officer, is expected to initiate disciplinary action. We grant time upto 31-07-2021, to the Commissioner of the Municipal Corporation to initiate and complete this exercise and submit a compliance report to the learned Registrar (Judicial) of this Court, on or before 31-08-2021. The learned Registrar (Judicial) would place the said report before this Court.

7. The learned advocate for the petitioners submits, on instructions, that the petitioners desire to withdraw this petition. However, prayer clause (C) may be kept open, in the event the petitioners succeed in establishing that they were illegally detained and they were deprived of their personal liberty, on account of a false FIR being registered.

8. The amended prayer clause (C) set out in this petition reads as under :-

“(C) To direct the respondents to pay the Compensation of Rs. Five lakhs each to the petitioner Nos. 01 to 04 and compensation of Rs. Two lack each to the petitioner Nos. 05 to 09 for deprivation of their personal liberty and for mental and physical agony suffered by them by issuing by issuing appropriate directions under section 482 of the Code, 1973;”

9. Considering the above, this petition is disposed off. In the event the petitioners establish before the competent Court that a false FIR was registered and that their personal liberty was illegally deprived causing physical and mental agony, they would be at liberty to avail of a remedy as may be permissible in law.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

SVH