

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 488 OF 2021

Dr. Swapna Patker
Shubh Swapna Bungalow,
Third lane, Sunder Nagar, Kalina,
Santacruz (East), Mumbai – 400 098

...Petitioner

Versus

1. State of Maharashtra
Through Public Prosecutor, High Court,
of Bombay
2. Senior Inspector of Police
Vakola Police Station, Anand Nagar,
Western Highway, Santacruz (East)
Mumbai – 400 055
3. Deputy Commissioner of Police
Zone 8, BKC, Mumbai
4. Mr. Sanjay Rajaram Raut
'Maitri', Friends Colony, Bhandup (East)
Mumbai – 400 042.

...Respondents

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**WITH
WRIT PETITION NO. 338 OF 2021**

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Third lane, Sunder Nagar, Kalina,
Santacruz (East), Mumbai – 400 098 ...Petitioner

Versus

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Through Public Prosecutor, High Court,
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Ms. Abha Singh, a/w Mr. Aditya Pratap, i/b Aditya Pratap &
Associates, for the Petitioner in all Petitions.

Smt. A. S. Pai, PP for the State/Respondent nos.1 to 3 in all
Petitions.

Mr. P. K. Dhakephalkar, Senior Advocate, i/b Ms. Gauri
Godse, for Respondent no.4 in all petitions,

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

RESERVED ON: 22nd JULY, 2021.

PRONOUNCED ON: 25th AUGUST, 2021.

COMMON JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the
consent of the learned Counsels for the parties, heard finally.

2. Primary and principal grievance, which is common in these petitions, under Article 226 of the Constitution of India is the alleged laxity of the law enforcement agency in investigating into the reports lodged by the petitioner and the resultant infringement of the fundamental rights of the petitioner. Hence, these petitions are decided by this common judgment.

3. At the outset, in the context of the issues which arise for consideration in these petitions, it may be advantageous to notice the prayers in the petitions. The prayers in WP/488/2021, which is reckoned as a lead petition, are extracted below:

“A. That this Hon’ble Court may be pleased to pass a writ in the nature of Mandamus under Article 226 of the Constitution of India, 1949, directing Vakola Police Station (Respondent no.2) to investigate the offenses as disclosed in the FIR No.324 of 2013 dated 30th July, 2013 lodged by the Petitioner at Vakola Police Station.

B. That this Hon’ble Court may be pleased to pass an order for departmental inquiry against Respondent no.2 to find out the reasons for their failure to take prompt and appropriate course of investigative action against the accused after registration of FIR.

C. That this Hon’ble Court may be pleased to pass an order against Respondent no.2, for failure to perform its duties under Section 29 of the Police Act, 1861;

D. That this Hon’ble Court may be pleased to pass an order against Respondent no.2 for failure to perform its duties to conduct impartial and unbiased investigations under Section 156 of the Cr.P.C.

E. That this Honourable Court may direct Respondent nos.2 to produce the case diaries of the respective FIRs u/s 172 of Cr.P.C. registered by them for inspection and perusal by this Honourable Court;

F. That this Hon’ble Court may be pleased to pass an order for arrest and custodial interrogation of Respondent

no.4 in order to ascertain the entire web and extent of his wrong doings and misuse of power and position by him.

G. That this Hon'ble Court may be pleased to pass an order of search and seizure operations to be conducted at the residence and office premises of the Respondent No.4.

H. That this Hon'ble Court may be pleased to pass protective orders in favour of the Petitioner against the Respondent no.4 to ensure she is not stalked, harassed, or molested any further directly or indirectly.

I. That this Hon'ble Court may be pleased to pass restrictive orders in the nature of temporary injunctions and permanent injunctions against the respondent no.4 prohibiting him from approaching or contacting the professional contacts or any of close relatives or loved ones of the petitioner to ensure petitioner does not suffers any physical, monetary, mental, or emotional damages directly or indirectly until the final disposal of this Writ Petition to ensure the petitioner is not stalked, harassed, or molested any further.

J. That the Hon'ble Court may be pleased to direct the Respondent No.4 to pay for the Cost of the Writ Petition and Legal expenses as paid by the Petitioner.

K. Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice."

4. It would be contextually relevant to note that the prayers in WP/489/2021 and WP/338/2021 are almost identical with the change being that of the particulars of FIR lodged by the petitioner like FIR number, date and the offences.

5. Facts in WP/488/2021:

(a) The petitioner claims to be a multi-talented person with multifarious skill sets. The petitioner alleges that she has been constantly subjected to mental torture, threats, stalking, harassment, abuse, assault and attack at the hands of respondent no.4 or other unknown persons. She claimed to

have lodged FIRs. However, no effective investigation has been conducted despite lapse of several years.

(b) It is the claim of the petitioner that on 29th June, 2013, at about 9.00 pm. while on her way to home in her car bearing registration No. MH-04/DY-9018, when she reached in front of the Avashya House on CMT Road, an unknown person suddenly came in front of the car and smashed the windshield with an object. The driver of the car got scared and slowed it down. The said unknown person came to the side of the car, on which the petitioner was sitting, and smashed the window glass of the car by a long rod. The petitioner sustained injuries as the glass shards entered her eyes. She was immediately shifted to the Asian Heart Hospital. While being treated, the petitioner recollected that there was another unknown associate of the said assailant. The petitioner thus approached Vakola Police Station and lodged report leading to registration of CR No.324 of 2013 for the offences punishable under Sections 341, 324 and 427 read with 34 of the Penal Code.

(c) The petitioner avers that despite passage of eight long years, the Senior Inspector of Police, Vakola Police Station – respondent no.2 has not carried out any investigation into aforesaid serious incident of assault upon the petitioner. The

centrality of the allegation of the petitioner is that the inaction of the police, despite a direction by the National Commission for Women, is the direct outcome of the strong influence and political power and position of respondent no.4, who is a sitting Member of Parliament. Myriad allegations are made against respondent no.4 ranging from violent attacks on the petitioner by hoodlums and hirelings, to lodging of false and baseless complaints against the petitioner, to harassment of the well wishers of the petitioner, to driving a wedge a rift between the petitioner and her husband.

(d) Aggrieved by the alleged inaction on the part of the law enforcement agency and the alleged acts of commission and omission on the part of respondent no.4, the petitioner has invoked the writ jurisdiction for the afore-extracted reliefs.

6. Facts in WP/489/2021:

The petitioner lodged a report with Mahim Police Station on 16th May, 2013, with the allegations that she had received extortion calls from an international cell phone on her cell phone, on 25th March, 27th March, and 29th March, 2013, and on the landline at her restaurant and bar Sefron-12. On 15th March, 2013, at about 5.25 pm., while she was on her way to the said restaurant, two persons riding Kawasaki-100

motorcycle approached towards her in a high speed. The pillion rider attempted to slash her by means of a razor like sharp weapon. She took evasive action by raising her left hand. The blow fell on her left arm. She was shifted to KEM Hospital. Thus, after treatment, she approached the police and lodged report leading to CR No.239 of 2013, for the offence punishable under Section 324 read with 34 of the Penal Code against the unknown assailants. The petitioner alleges that there has been no investigation in the aforesaid crime as well over all these years.

7. Facts in WP/338/2021:

On 2nd October, 2018, the petitioner lodged a report at Vakola Police Station with the allegation that on 11th September, 2018, at about 11.45 am., when the petitioner left her home she realised that a motorcycle rider was following her. The petitioner claimed to have changed the route and alighted of the auto-rickshaw, in which she was travelling, to ascertain whether the motorcyclist was indeed on her pursuit. After realising that the motorcyclist was pursuing her relentlessly and purposefully, the petitioner claimed to have stopped the rickshaw near Vakola Police Station and alerted the police. At her pointing out, the said motorcyclist, who identified himself as Vyankatesh Uppar,

an employee of Star Security, was apprehended by police. The petitioner thus lodged report against the said person and Star Security leading to registration of CR No.376 of 2018, for the offence punishable under Section 354D of the Penal Code. The petitioner alleges that despite expressing an apprehension that she was being stalked at the behest of some persons, the Investigating Officer had not conducted any effective investigation and unearthed the identity of those persons and thus this writ petition.

8. For the completion of narration, it is necessary to note that the allegations which are made against respondent no.4 in WP/488/2021 are reiterated, and identical reliefs are sought, in these two petitions as well.

9. In the backdrop of these allegations, especially the time-lag since the registration of the FIRs (in the year 2013 in First and Second petitions, and in the year 2018 in the Third petition) and the situation in life of the parties, we thought it appropriate to direct the Commissioner of Police, Mumbai, to look into the grievances raised in the petitions and submit a status report, and, thus, by an order dated 22nd June, 2021, we had ordered accordingly. The Commissioner of Police submitted a report on 30th June, 2021.

10. Adverting to the action taken and developments in the intervening period, the Commissioner of Police submitted that fair, impartial and unbiased action as per law has already been taken in the grievances raised by the petitioner. In the context of the principal allegation that no investigation had at all been carried out in the FIRs lodged by the petitioner, it was informed to the Court that:

- (i) in CR No.324 of 2013, registered with Vakola Police Station (subject matter of WP/488/2021) a final report ('A' summary) was submitted before the jurisdictional Magistrate on 27th April, 2015 and despite 30 notices having been issued to the petitioner, the latter chose not to attend the Court.
- (ii) In CR No.239 of 2013, registered with Mahim Police Station (subject matter of WP/489/2021) a final report ('A' summary) was submitted on 28th August, 2014, which awaits consideration.
- (iii) In CR No.376 of 2018, registered with Vakola Police Station (subject matter of WP/338/2021) post investigation, charge-sheet has already been lodged in the Court of jurisdictional Magistrate on 16th March, 2019, leading to CC No.509/PW/2019.

11. The report further reveals that the police had enquired into the matter, at the instance of the National Commission for Women and reports were submitted on 26th August, 2020 and 12th October, 2020. It also adverts to the fact that Mumbai Police have provided 24\7 police protection to the petitioner to ensure her safety and security from 18th February, 2020 till date.

12. In view of the aforesaid report, we directed the Investigating Officers in the respective CRs to file affidavits-in-reply restricted to the status of the crimes registered by the petitioner. Pursuant to the said order, Mr. Jaywant Sankpal, Police Inspector, who had conducted investigation in CR No.86/2013 (CR No.342/2013, Vakola Police Station) filed an affidavit-in-reply in WP/488/2021. He affirmed that at the instance of the petitioner, the investigation in CR No.324/2013 registered with Vakola Police Station, came to be transferred to the Crime Branch, Mumbai, and the crime was re-registered at CR No.86/2013. He further affirmed that despite thorough investigation the accused could not be found and, therefore, after obtaining permission of competent authority, 'A' summary report was filed in the Court of the learned Additional Chief Metropolitan Magistrate, 37th Court Esplanade, Mumbai, on 7th

May, 2015. Notices were issued to the petitioner on number of occasions, but the petitioner did not appear before the Court, except on 20th December, 2017. On that day, the petitioner was directed to file say on 2nd February, 2018. The matter is now posted on 13th December, 2021 as the petitioner has not appeared before the Court despite the matter having been posted for her response/say on 30 occasions.

13. Mr. Anant Ahire, Assistant Police Inspector, who investigated CR No.239 of 2013, filed affidavit-in-reply in WP/489/2021. He affirmed that even after thorough investigation the accused could not be found and therefore 'A' summary report has been filed in the Court of the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, on 28th June, 2021, and the matter was posted for consideration on 12th July, 2021. Since the petitioner did not appear and the mater stood over to 12th August, 2021.

14. Ms. Poonam Pawar, Assistant Police Inspector, who investigated CR No.376 of 2018, filed affidavit-in-reply in WP/338/2021. The Investigating Officer asserts that during the course of investigation statement of the petitioner was recorded under Section 164 of the Code, the accused came to be arrested and eventually charge-sheet was lodged in the Court of the

Jurisdictional Magistrate, leading to CC No.509/PW/2019. The matter is now posted for hearing on 22nd March, 2022.

15. It would be contextually relevant to note that respondent no.4 has also filed affidavits in all three petitions. The substance of the resistance put-forth by respondent no.4 is that the petitions suffer from the vice of *suppressio veri and suggestio falsi*. And, therefore, on that ground alone the petitions deserve to be dismissed. In the backdrop of the developments which have taken place in the intervening period, as adverted to by the Investigating Officer in the respective cases, the claim in the petitions that no investigation has been carried out at all is stated to be false to the knowledge of the petitioner. Further claim of the petitioner that no action was taken in respect of the recommendation of the National Commission for Women is stated to be incorrect as the police conducted requisite inquiry, including the recording of the statement of respondent no.4, and found that there was no substance in the allegations of the petitioner and, accordingly, submitted reports on 26th August, 2010 and 12th October, 2020. As regards the rest of the allegations levelled against respondent no.4, the latter contends that he has been unnecessary dragged by the petitioner by making false and baseless allegations. None

of the allegations made against respondent no.4 has ever been made by the petitioner before any of the Investigating Officers. The allegations are thus stated to be false, baseless and politically motivated.

16. In the wake of the aforesaid pleadings, we have heard Ms. Abha Singh, the learned Counsel for the petitioner, Smt. Pai, the learned Public Prosecutor, for the State and Mr. Dhakephalkar, the learned Senior Counsel for respondent no.4. With the assistance of the learned Counsels for the parties, we have carefully perused the material on record including the report submitted by the Commissioner of Police.

17. To begin with, it is imperative to note that in view of the developments, which have been brought to the notice of the Court as regards the investigation into the FIRs lodged by the petitioner, as emerged from the affidavits of the respective Investigating Officers, we expressed our reservations regarding the entertainability of the petition in the present form. Ms. Abha Singh, however, stoutly submitted that notwithstanding the aforesaid developments namely filing of final report ('A' summary) in CR No.86/2013 (CR No.324/2013, Vakola Police Station) and CR No.239/2013, and lodging of charge-sheet, leading to CC No.509/PW/2019 in respect of the third, the

grievance of the petitioner subsists and the petitions be, therefore, determined on merits.

18. Ms. Abha Singh, the learned Counsel for the petitioner would urge that the investigation carried out by the respective Investigating Officers in the FIRs lodged by the petitioner is a moonshine. The refrain that in two of the FIRs; Nos.324 of 2013 and 239 of 2013, the Investigating Officers could not trace out the culprit is unworthy of acceptance. Despite the petitioner – first informant having furnished the leads, the Investigating Officers did not pursue the matter and have filed ‘A’ summary report. In the face of such designedly defective investigation, the petitioner is left with no other remedy than to invoke the extraordinary jurisdiction, urged Ms. Abha Singh.

19. Per contra, the learned PP, submitted that the criticism advanced against the investigating agency is wholly unjustified. It was submitted that the petitioner can appear before the jurisdictional Magistrate where the proceedings are pending and put-forth her grievances. Appropriate orders can be passed by the competent forum and, therefore, in view of the efficacious remedy, there is no occasion for exercise of extraordinary jurisdiction by this Court, especially when the petitioner has not been appearing before the jurisdictional Magistrates.

20. We have given our anxious consideration to the rival submissions canvassed across the bar. First and foremost, we must record that from the perusal of the petitions one gets an impression that the petitioner approached the Court with a positive case that, despite years having passed by, no action was taken by the Investigating Officers on the FIRs lodged by the petitioner. As it turned out, not only the Investigating Officers have carried out the investigation but lodged final report ('A' summary) in two of the FIRs and in the third, charge-sheet has already been lodged leading to CC No.509/PW/2019. In our view, what exacerbates the situation is the fact that the petitioner is stated to have appeared before the learned Magistrate on 20th December, 2017 in the 'A' summary proceeding in CR No.86/2013 (CR No.324, Vakola Police Station). In this setting of the matter, it was incumbent upon the petitioner to make a true and full disclosure of the facts. Nonetheless, we propose to consider the submissions canvassed on behalf of the petitioners, on legal premise.

21. As regards FIR No.376/2018 for the offence punishable under Sections 354D of the Penal Code which resulted in filing of charge-sheet leading to CC No.509/PW/2019, if the petitioner has any grievance about the persons who ought to have been

arraigned as accused, in addition to the accused sent up for trial, it would suffice to note that there are adequate provisions in the Code which address such contingency. Thus, no further consideration is warranted in the context of CR No.376/2018, registered with Vakola Police Station, Mumbai.

22. In the context of 'A' summary reports, two issues crop up for our consideration. One, the courses which are open in law when an Investigating Officer post investigation, files a final report contending that no offence is committed by a named person or that though offence is committed yet offender could not be found ('A' summary). Two, the exercise of extraordinary writ jurisdiction by High Court where the investigating officer, post completion of investigation, files reports before the jurisdictional Magistrate and those proceedings are awaiting adjudication.

23. On the first question, the legal position seems to be well nigh settled. Under the scheme of the Code, the functions of the investigating agency and judiciary are well demarcated. The investigation is the exclusive province of the investigating agency. Ordinarily the courts cannot interfere in the matter of investigation. The courts cannot direct as to how the investigation is to be carried out, who to be investigated into and

the manner of investigation etc. Though the Magistrate exercises supervisory jurisdiction over investigation, in certain areas, yet the Magistrate cannot direct the Investigating Officer to form a particular opinion and lodge charge-sheet. It is for the Investigating Officer to arrive at a conclusion. Conversely, the Magistrate is not bound by the opinion of the Investigating Officer. He can take cognizance of the offence or direct further investigation even where the Investigating Officer opines that no offence is made out or further investigation is not warranted and files a closure report. If the Magistrate after considering the final report, finds that the investigation is unsatisfactory or incomplete or the circumstances of the case warrant further investigation, the Magistrate is empowered to direct further investigation under Section 156(3) of the Code. Thus, the Magistrate is not bound to accept the final report submitted by the investigating agency and is empowered to either take cognizance, on the basis of existing material or direct further investigation.

24. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Abhinandan Jha and others vs. Dinesh Mishra*¹ wherein after adverting to the previous pronouncements including the celebrated judgment of

1 AIR 1968 Supreme Court 117,

the Privy Council in the case of King *Emperor vs. Khwaja Najir Ahmed*² the Supreme Court expounded the legal position in the following words:

“15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report'? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under S.156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he, can take cognizance of the offence under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report.”

(emphasis supplied)

25. In the light of the aforesaid exposition of law, especially in the context of the situation where the Magistrate is required to deal with a final report ('A' summary) to the effect that the offender could not be traced despite investigation, the jurisdictional Magistrate, can very well direct further investigation. The question as to whether the stand of the

² AIR (32) 1945 Privy Council 18.

Investigating Officer that the offender could not be found, in spite of earnest investigation, is justifiable is to be determined by the Magistrate.

26. In the facts of the case, we have noted that in the first two FIRs, where final report ('A' summary) have been filed by the Investigating Officers, the jurisdictional Magistrates have issued notices to the petitioner. In one of the matters, the petitioner has even appeared before the learned Magistrate once. The jurisdictional Magistrates have thus acted in conformity that the requirement of law that before a final report is accepted, the first informant who lodged the FIR, ought to be provided an opportunity of hearing. In such a situation, the first informant can persuade the learned Magistrate to take cognizance on the basis of the material collected during the course of investigation or direct further investigation. Often, the first informants file a protest petition pointing out the existence of material which either warrants taking of cognizance or further investigation. Though there is no statutory requirement, this practice of issuing notice to the first informant before accepting the final report has ingrained into law.

27. A useful reference, in this context, can be made to a Three Judge Bench decision of the Supreme Court in the case of

Bhagwant Singh vs. Commissioner of Police and another³

wherein the Supreme Court expounded the courses which are open to the Magistrate, in the two contingencies, which may arise depending upon the nature of the report under Section 173 of the Code. First, when it concludes that offences are committed. Second, when it is opined that no offence is made out. The observations of the Supreme Court in paragraphs 3 and 4 are instructive and hence extracted below:

“3. It will be seen from the provisions to which we have referred in the preceding paragraph that when an informant lodges the First Information Report with the officer-in-charge of a police station, he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer in charge of the police station on the basis of the First Information Report lodged by him. No sooner he lodges the First Information Report, a copy of it has to be supplied him, free of cost, under sub-section (2) of Section 154. If notwithstanding the First Information Report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. Then again, the officer-in-charge of a police station is obligated under sub-section(2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer-in-charge of a police station on the First Information Report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the First Information Report must know what is the result of the investigation initiated on the basis of the First Information Report. The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of

3 1985(2) SCC 537.

ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.

4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the

Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

(emphasis supplied)

28. In the backdrop of the aforesaid exposition of the legal position, readverting to the facts of the case, we are of the considered opinion that the petitioner can appear before the jurisdictional Magistrate and raise the grievance that the investigation is incomplete or unsatisfactory. Indeed, the petitioner has been provided such opportunity by the jurisdictional Magistrate. It is for the petitioner to avail those opportunities.

29. Conversely, at this juncture, it would be inadvisable for this Court to interject the proceedings which are pending before the competent courts. Undoubtedly, the powers of the High Court under Article 226 are of wide amplitude. However, resort to the plenary power where proceedings are pending before the competent forums, without there being any exceptional situation and compelling reasons, may not be justifiable.

30. We are fortified in our view by a judgment of the Supreme Court in the case of *Gangadhar Janardan Mhatre vs. State of Maharashtra and others*⁴ wherein a Division Bench of this Court had declined to exercise the writ jurisdiction in a petition where somewhat identical reliefs were sought, with the allegations that the proceedings which were pending before the competent forums were the outcome of the laxity of the investigating agency and, thus, there was need for further and better investigation. The Supreme Court, after adverting to the pronouncements in the case of *Abhinandan Jha* (supra) and *Bhagwant Singh* (supra) reiterated the legal position and observed that the remedy for the appellant therein was before the jurisdictional forums and the writ application was not the proper remedy without availing remedy available under the Code

4 (2004) 7 Supreme Court Cases 768.

and the appellant could not have approached the High Court by filing a writ petition.

31. It is axiomatic that in the event the jurisdictional Magistrates adjudicate the proceedings, adverse to the interest of the petitioner, latter can avail the appropriate remedies as provided in law. However, at this stage, this Court cannot exercise extraordinary jurisdiction when the petitioner can very well agitate the grievances before the forums under the Code. We are thus not persuaded to entertain the prayers in the petitions centered around the incomplete or unsatisfactory investigation.

32. In the context of the allegations against respondent no.4, evidently those allegations are rooted in facts. It is trite that in exercise of writ jurisdiction this Court is not expected to delve into thickets of facts. It is not the case that in the first information reports, referred to above, any role was attributed to respondent no.4. As indicated above, the allegations against respondent no.4 range from personal to professional to familial pursuits of the petitioner. Suffice to note that the petitioner may agitate those grievances before the appropriate forums in a manner known to law, if so advised. However, in exercise of writ jurisdiction, where such allegations are essentially rooted in

facts, the prayers like a direction for arrest and custodial interrogation of respondent no.4, search and seizure at the residential and office premises of respondent no.4 and prohibitory and injunctive reliefs, simply do not deserve countenance. We refrain from making further observations to obviate the possibility of being understood to have expressed an opinion over the disputed questions of facts.

33. The conspectus of aforesaid consideration is that the petitions deserve to be dismissed.

34. Hence, the following order:

: O R D E R :

The WP/488/2021, WP/489/2021 and WP/338/2021 stand dismissed subject to the following directions:

(i) The learned Additional Chief Metropolitan Magistrate, 37th Court, Esplande, Mumbai, is requested to make an endeavour to decide the 'A' summary proceeding Vide No.21/A summary/2015, arising out of in CR No.86 of 2013 (CR No.324/2013, Vakola Police Station), as expeditiously as possible, and preferably, within three months from the date on which the petitioner is directed to appear before the learned Magistrate, if not already decided.

The petitioner – first informant shall appear before the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai, on 20th September, 2021.

(ii) The learned Additional Chief Metropolitan Magistrate 9th Court, Bandra, is requested to decide the 'A' summary proceeding vide No.25/'A' Summary/2021 arising out of FIR No.239/2013, registered with Mahim Police Station, as expeditiously as possible and preferably within three months from the date on which the petitioner is directed to appear before the learned Magistrate, if not already decided.

The petitioner shall appear before the learned Additional Chief Metropolitan Magistrate 9th Court, Bandra, in the aforesaid proceeding on 22nd September, 2021.

(iii) By way of abundant caution we clarify that the observations made hereinabove are confined to the adjudication of the issues raised in the writ petitions and they may not be construed as an expression of opinion on the merits of the proceedings pending before the jurisdictional Magistrates and those proceedings be decided on their own merits uninfluenced by the aforesaid observations.

Rule stand discharged.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]