

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

CRIMINAL WRIT PETITION NO.347 OF 2021

Mujibur Rehman Haji Israr Alam Siddiqui
Aged about 48 years, Occ: Business,
Residing at Flat No.902, 9th floor,
'D' Wing, Sugra Park, Pathan Wadi,
Rani Sati Marg, Malad (E),
Mumbai-400 097

..Petitioner

Versus

1. The State of Maharashtra
Through the Public Prosecutor,
High Court, Mumbai.
2. The Sr. Inspector of Police,
Nagpada Police Station, Nagpada,
Mumbai-400 008.
3. Ghanshyam Patil
Police Inspector, Nagpada Police
Station, Nagpada, Mumbai-400 008.
4. Parvez Iqbal S/o Abdul Salam,
Age not known, Occ: Business,
having address at opp. Shop No.7, Gr. Floor,
Mujibur Rehman S/o Haji Israr Alam
Building 28/32, Shuklaji Street,
Mumbai-400 008.
5. Arif S/o Matlub Ansari,
Age not known, Occ: Business, having
address at opp. Shop No.7, Gr. Floor,
Mujibur Rehman S/o Haji Israr Alam
Building, 28/32, Shuklaji Street,
Mumbai-400 008.

..Respondents

Mr. B. P. Pandey a/w Ms. Ridhima Mangaokar, Mr. Aayush Tiwari i/by Vivek Pandey, Advocates for the Petitioner.

Mrs. S. D. Shinde, APP for the Respondent – State.

Mr. J. K. Shah a/w Mr. A. G. Manurkar, Mr. Akash Vikram Singh i/by RJ Law for Respondent Nos.4 & 5.

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 18.02.2021
PRONOUNCED ON : 31.03.2021**

JUDGMENT (Per Manish Pitale, J.)

1. The petitioner herein is aggrieved by alleged failure on the part of respondent No.2 – Senior Inspector of Police of Nagpada Police Station in Mumbai in taking cognizance of complaints submitted by the petitioner whereby according to him cognizable offences committed by and on behalf of respondent Nos.4 and 5, were brought to the notice of respondent No.2. The petitioner also seeks a direction to the said respondents for providing police protection and assistance to the petitioner in view of alleged threats to his life and property.

2. The petitioner claims that he had submitted complaints on 24.01.2020, 27.10.2020 and 21.11.2020 before the respondent No.2 stating that he was being harassed by certain persons posing as CBI officers and that all this was at the behest of respondent Nos.4 and 5 who were preventing the petitioner from entering certain shops in a building wherein the predecessor of respondent No.4 was a tenant and now the said respondent is in possession of certain portion as a tenant. According to the petitioner, despite an eviction decree in respect of shop No.8 in a building and execution of such decree in favour of the petitioner, the common passage leading to the said shop and the adjoining shop was being obstructed by the respondent Nos.4 and 5 so as to create nuisance not only for the petitioner but other tenants using the common passage in the said

building. It is the case of the petitioner that despite favourable orders being passed by civil courts in his favour and execution of aforesaid decree, repeatedly obstructions were being created by respondent Nos.4 and 5, to which the respondent No.2 and other authorities were turning a blind eye. In this backdrop, the petitioner has approached this Court seeking aforementioned reliefs.

3. Mr. B. P. Pandey, learned counsel appearing for the petitioner vehemently submitted that the respondent No.2 had failed to act as per the mandate of law and the provisions of the Code of Criminal Procedure (“Cr.P.C.”), particularly section 154 thereof in failing to register offences despite repeated complaints submitted by the petitioner. According to the petitioner, this was in violation of settled position of law recognized by the Hon’ble Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Ors., (2014) 2 SCC 688**. It was submitted that the private respondents had no right to obstruct the use of common passage by the petitioner and tenants in the said building, particularly when there were orders passed by the civil courts restraining them from creating such obstructions. It was submitted that the respondent No.2 had utterly failed to take action in terms of the provisions of Cr.P.C. and that therefore, the petitioner was constrained to approach this Court invoking writ jurisdiction. Attention of this Court was invited to a decree passed in favour of the petitioner in respect of shop No.8 situated in the aforesaid building as also the fact that the said decree stood executed. It was submitted that despite the decree being executed the petitioner was unable to enjoy the possession of the aforesaid shop and access to the adjoining shop No.7 because of repeated obstructions illegally committed by the private respondents. Learned counsel invited attention of this Court to a map at Exh.O to support the aforesaid contentions. Learned counsel for the petitioner sought appropriate orders from this Court in this context.

4. Mr. J. K. Shah, learned counsel appearing for the respondent Nos.4 and 5 vehemently opposed the contentions raised on behalf of the petitioner. It was submitted that in so far as allegations against the said respondents were concerned, the same were baseless and that the petitioner was guilty of suppressing facts from this Court. It was submitted that when the petitioner had indulged in suppression of material facts from this Court and petitioner had approached with unclean hands, the writ petition deserved to be dismissed at the outset. In this context, learned counsel for respondent Nos.4 and 5 submitted that the petitioner had suppressed the fact that there was another suit pending between the parties, which pertained to common area in the said building, which had been rented out to the predecessor of the said respondent wherein the respondent No.4 was now a tenant. It was submitted that when the petitioner himself filed the suit for eviction of respondent No.4 from the said common area, there was no question of seeking any police help for removing the respondent No.4 from the said common area. Learned counsel relied upon judgment of the Hon'ble Supreme Court in the case of **K. D. Sharma Vs. Steel Authority of India Limited and others, (2008) 12 SC 481** to claim that the writ petition deserved to be dismissed only on the ground of suppression of the aforesaid fact in the writ petition.

5. Learned counsel for the respondent Nos.4 and 5 further submitted that in so far as the grievance of the petitioner regarding failure of the respondent Nos.1 to 3 in registration of offence was concerned, there was an alternative remedy available with the petitioner in the form of initiating appropriate proceedings under section 156(3) of the Cr.P.C.. It was submitted that the petitioner could not have filed the present writ petition without exhausting the said remedy available to him. Even if a cognizable offence was made out under section 154 of the Cr.P.C., on the alleged failure of respondent Nos.1 to 3 to register the FIR, the petitioner ought to have filed complaint under

section 156(3) of the Cr.P.C.. Having failed to do so, the petitioner was not entitled to invoke writ jurisdiction of this Court.

6. In support of the said proposition, learned counsel for the respondent Nos.4 and 5 relied upon Full Bench judgment of this Court in the case of **Panchbhai Popatbhai Butani and Ors. Vs. State of Maharashtra and Ors., 2010(1) Mh.L.J. 421.**

7. Mrs. S. D. Shinde, learned APP appeared on behalf of respondent Nos.1 to 3 and submitted that alternative remedy was available with the petitioner and he ought not to have rushed to this Court invoking writ jurisdiction.

8. Having heard learned counsel for the rival parties, there are two aspects that deserve consideration in this writ petition. Firstly, the contention of the petitioner regarding failure on the part of the respondent Nos.1 to 3 to take appropriate action against respondent Nos.4 and 5 despite the illegal obstruction created by them for use of common passage in the aforesaid building and in that context the alleged suppression of facts in the writ petition. Secondly, the contention of the petitioner that respondent No.2 ought to have registered offences in view of the three complaints submitted in writing by the petitioner and in that context availability of alternative remedy under section 156(3) of the Cr.P.C..

9. As regards the first contention, it would be necessary to deal with the aspect of alleged suppression of the facts on the part of the petitioner while seeking to invoke writ jurisdiction. It is the specific contention of respondent Nos.4 and 5 that while approaching this Court and making allegations against the said respondents regarding illegal obstruction in use of common passage, the

petitioner did not state the fact that he had already initiated a suit for eviction concerning the said common passage against respondent No.4 before the competent civil Court. Attention of the Court was invited to rent receipt issued in favour of predecessor of respondent No.4 to claim that when the respondent No.4 was in possession of the said common passage as a tenant, there was no question of an illegal obstruction being committed, particularly when a suit for eviction was already pending before the competent Court. The respondent Nos.4 and 5 specifically annexed a copy of the said suit bearing T.E. Suit No.115/143 of 2012 pending before the Court of Small Causes at Mumbai.

10. A perusal of the writ petition would show that although a copy of the said plaint has not been annexed to the writ petition, a reference to the same has been made in the documents filed with the writ petition. The petitioner has annexed a map of the relevant portion of the building at Exh.O to show the difficulty being faced by him in so far as the use of common passage is concerned and in the said map the common passage is shown distinct from the common area in respect of which the respondent No.4 claims to be a tenant and in respect of which the aforesaid suit bearing T.E. Suit No.115/143 of 2012 has been filed. The thrust of the contentions raised on behalf of the petitioner is that respondent Nos.4 and 5 are obstructing use of common passage by the petitioner and tenants in the said building by blocking access to shop No.7 and other shops in the building. In that context, the petitioner has referred to suit bearing RAE Suit No.75/122 of 2012 concerning shop No.8 in which decree was passed, which also stood executed. The petitioner has placed reliance on the said decree in the context of the illegal obstruction allegedly being made by respondent Nos.4 and 5. Therefore, it cannot be said that the petitioner suppressed facts from this Court in order to mislead this Court while seeking to invoke writ jurisdiction. Consequently, it cannot be said that the writ petition deserves to be dismissed only on this ground. The judgment of the Hon'ble Supreme Court

relied upon by the learned counsel for respondent Nos.4 and 5 in this context in the case of **K. D. Sharma** (*supra*) is misplaced because in the said case, it was held that writ petition ought to be dismissed when the petitioner makes false statements or conceals material facts or misleads the Court while seeking relief. We are of the opinion that such cannot be said to be the case in the present matter and therefore the aforesaid contention is rejected.

11. As regards failure on the part of respondent Nos.1 to 3 in coming to the aid of the petitioner in view of illegal obstruction being created by respondent Nos.4 and 5 for use of common passage in the said building, it needs to be examined as to whether there are orders passed by competent civil courts in that regard, which are being flouted by the private respondents. In this context, learned counsel appearing for respondent Nos.4 and 5 placed much emphasis on rent receipt pertaining to common area executed in favour of predecessor of respondent No.4, as also the fact that the petitioner has filed T.E. Suit No.115/143 of 2012 regarding eviction of respondent No.5 from the said common area, which is pending before the Court of Small Causes. There is no doubt about the fact that such a suit has been indeed filed by the petitioner and it is pending, but what is crucial is that the petitioner has not raised any grievance in respect of the said common area, but he has raised grievance in respect of common passage which leads to shop Nos.7 and 8 as also to other parts of the building in which according to the petitioner, respondent Nos.4 and 5 have created obstructions. In this regard, it is relevant to note that the other suit filed by the petitioner in respect of shop No.8 bearing R.A.E. Suit No.75/122 of 2012 was decreed in favour of the petitioner. In the appeal, a conditional stay order was passed, but since the respondent No.4 failed to abide by the conditions imposed in such stay order, the decree stood executed and the petitioner came in possession of shop No.8.

12. In the said appeal, applications were filed by the petitioner as well as respondent No.4. It is significant that the petitioner also filed a cross appeal and that an application was filed by the petitioner in the said cross appeal seeking relief in respect of obstructions created by respondent No.4 in use of common passage. The Appellate Bench of the Small Causes Court heard arguments on the aforesaid application filed on behalf of the petitioner bearing Exh.34 and passed an order on 12.01.2021, specifically restraining the respondent No.4 from causing any sort of obstruction or interference to the common use and enjoyment of the petitioner and other tenants over the common passage for shop Nos.7 and 8 in any manner whatsoever. In this order, the Appellate Bench of the Small Causes Court has given findings against respondent No.4 in respect of the said common passage. The Appellate Bench has also taken note of the fact that the petitioner has filed the aforesaid separate suit for eviction of the respondent No.4 from open space or common area which was rented out to the predecessor of respondent No.4. Thus, it becomes evident that the Appellate Bench of the Small Causes Court passed the said order against respondent No.4 in respect of the common passage after taking into consideration all the relevant facts. The said order operates against respondent No.4 and in favour of the petitioner.

13. It is evident from the aforesaid material that competent civil court has held in favour of the petitioner in respect of common passage as depicted in the map at Exh.O and respondent No.4 stands specifically restrained from raising any obstructions regarding use of the common passage. The petitioner has been claiming that such obstruction is being illegally created by respondent No.4 and 5, which has led to harassment and repeated complaints to the police and yet no steps have been taken by the authorities for granting protection to the petitioner or taking necessary steps in the matter. We are of the opinion that the dispute regarding use of common passage may be of civil

nature, but when competent civil courts have passed orders against respondent No.4 which are being blatantly violated, the respondent Nos.1 to 3 are expected to take appropriate steps for ensuring that rule of law prevails.

14. Learned counsel appearing for respondent Nos.4 and 5 was unable to demonstrate as to why the respondent No.4 could claim any right of creating obstruction in respect of use of the said common passage by the petitioner, particularly when the Appellate Bench of the Small Causes Court passed aforesaid order dated 12.01.2021, allowing the application of the petitioner at Exh.34. Therefore, to that extent, the petitioner is justified in approaching this Court seeking protection and assistance from respondent Nos.1 to 3, in respect of use of the said common passage leading to shop Nos.7 and 8, particularly in the face of favourable orders passed by the competent civil courts.

15. In so far as the second aspect of the matter is concerned, regarding failure of respondent No.2 to register offences and initiating investigation upon complaints lodged by the petitioner, we are of the opinion that the petitioner ought to have exhausted the remedies available under the Cr.P.C., instead of rushing this Court by invoking writ jurisdiction. A perusal of the complaints dated 24.01.2020, 27.10.2020 and 21.11.2020, submitted by the petitioner before respondent No.2 would show that they pertain to alleged threats given to the petitioner by some persons claiming to be CBI officers, abusing in filthy language and threats by respondent No.5 allegedly at the behest of respondent No.4, as also alleged theft of electricity and other such grievances in respect of shop No.8 in the aforementioned building. We are of the opinion that the petitioner ought to have followed the procedure laid down in section 154(3) and thereafter he could have initiated proceedings under section 156(3) of the Cr.P.C., instead of rushing to invoke writ jurisdiction of this Court.

16. In this context, learned counsel appearing for respondent Nos.4 and 5 are justified in relying upon judgment of this Court in the case of **Panchbhai Popatbhai Butani** (*supra*). In the said judgment the scheme under sections 154 and 156 of the Cr.P.C. has been elaborately discussed and it has been laid down as to the manner in which an aggrieved person seeking to trigger the criminal justice system needs to exhaust the steps under sections 154(1), 154(3) and then 156(3) of the Cr.P.C.

17. In view of the above, the writ petition is disposed of with the following directions :-

- A) Since the competent civil courts have passed orders against respondent No.4 and in favour of the petitioner in respect of use of common passage leading to shop Nos.7 and 8 in the aforementioned building, the respondent Nos.4 and 5 are directed to abide by such orders of the civil courts and respondent Nos.1 to 3 are directed to ensure that the respondent Nos.4 and 5 or any person at their behest does not create any obstructions in the use of the common passage by the petitioner.
- B) The respondent Nos.1 to 3 are directed to ensure that protection is provided to the petitioner against such obstruction that may be attempted by respondent Nos.4 and 5 or any person on their behalf in respect of the said common passage.
- C) The respondent No.2 is directed to take decision on the complaints submitted by the petitioner on 24.01.2020,

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27.10.2020 and 21.11.2020, within a period of two weeks from today.

- D) Depending on the decision taken by respondent No.2 on the said complaints, if the petitioner has any grievance, he is at liberty to exhaust the remedies under sections 154(3) and 156(3) of the Cr.P.C..

18. The writ petition is disposed of with the aforesaid directions.

[MANISH PITALE, J]

[S. S. SHINDE, J]