

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

Criminal Writ Petition No. 5188 of 2019

Shri Abhishek Dinkar Ekal 702/Bhavana Niwas, Dr.Walimbe Marg, Parel Village, Mumbai 400012.	...	Petitioner
V/s. State of Maharashtra	...	Respondent

Mr. Abhishek D. Ekal for the petitioner.

Mr. J.P. Yagnik, APP for the State.

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

24th March 2021.

JUDGMENT (PER MANISH PITALE, J)

The petitioner in this writ petition has appeared in person. By this writ petition he has prayed for setting aside of order dt.13th August 2019 passed by the Court of Metropolitan Magistrate whereby the Magistrate has dismissed the Protest Petition filed by the petitioner, while partly accepting 'C' Summary submitted by the Investigating Agency in the present matter.

2. Petitioner is the original complainant in FIR dt.25.9.2014 registered against 8 persons for offences alleged under Section 420 r/w 34 of the IPC. There is no dispute about the fact that subsequently offences under the Information Technology Act were also added in the said FIR.

3. The accused persons had filed Cr. Writ Petition No.671/2015 before this Court to seek quashing of the said FIR registered at the behest of the petitioner herein. The said writ petition was entertained and ad-interim relief was granted in favour of the accused to the extent that chargesheet would not be filed without the leave of this Court. At the sametime it was clarified by an order dt.9.2.2017 passed by this Court in the aforesaid writ petition that the investigation was not stayed and that the accused shall co-operate with the investigation.

4. Subsequently, upon completion of investigation, the Investigating Agency submitted 'C' Summary Report. The aforesaid fact was brought to the notice of this Court in the said pending writ petition. In this situation on 15.7.2019, this Court disposed of the writ petition and observed as follows:

“ 3. In the light of the C-Summary report filed in subject FIR by the concerned Police Station the grievance

raised in this petition shall not survive.

4. The learned counsel for the respondent No. 2-complainant submits that this Court by ad-interim order dated 09.02.2017 restrained the Bhoiwada Police Station from filing the charge-sheet in subject crime and therefore, C-Summary Report could not have been filed. This submission cannot be accepted as the ad-interim order was granted at the instance of the petitioner who came for quashment of the subject FIR. It is also pertinent to note that even this Court permitted the Investigating Officer for continuation of the investigation in subject crime. When the Investigation Officer found that there is no substance in the said FIR, the C-Summary report was filed. If the respondent No.2-complainant wants to object the same he can always file protest petition before the Magistrate and the learned Magistrate shall decide the C-Summary Report after hearing both the sides including the petitioner.

5. Subject to above we dispose of the petition and direct the learned Metropolitan Magistrate to dispose of the C-Summary Report as expeditiously as possible and within a period of four weeks from the date of receipt of this order.”

5. Accordingly, the Metropolitan Magistrate took up the matter for further consideration. The petitioner admittedly filed the protest

petition and participated in the proceedings before the Metropolitan Magistrate in pursuance of the aforesaid order dt.15.7.2019 passed by this Court in Criminal Writ Petition No.671/2015.

6. After considering the contentions of the petitioner and also submissions made on behalf of the original accused, by order dt.13.8.2019, the Metropolitan Magistrate held as follows:-

“ The “C” summary is partly accepted for offence punishable u/sec. 420, 406 r/w. 34 of IPC.

The I.O. is at liberty to continue with the investigation of hacking of email of informant u/sec. 66 of Information Technology Act.

The protest petition of informant stands dismissed.”

7. It is after the said order was passed by the Metropolitan Magistrate that the petitioner has approached this Court by filing the instant writ petition. This petition was filed as far back as on 1.10.2019 and till date it was not considered for consideration on merits and for issuance of notice. This Court in its order dt.06.01.2020 recorded that the petitioner appearing in person was not in a position to address the court properly. Accordingly, the petition was adjourned for a period of two weeks, as a matter of last chance. Thereafter, on 17.03.2020 it was adjourned and thereafter on 26.10.2020 the petition was again

adjourned at the request of the petitioner appearing in person. Subsequently, this petition stood adjourned on a couple of occasions and thereafter on 3.12.2020 the petitioner prayed for leave to amend. Such leave was granted and the petition was further adjourned.

8. Thereafter, on 15.2.2020, none appeared for the petitioner and subsequently in January and February of 2021 this petition stood adjourned to be eventually listed today for consideration.

9. The petitioner appearing in person invited attention of this Court to the prayers in the writ petition. The first prayer is for calling for the record and proceedings of the said FIR registered on 25.9.2014. Thereafter, the petitioner has prayed for setting aside the aforesaid order dt.13.8.2019 passed by the Metropolitan Magistrate. The petitioner has further sought re-investigation into the matter stating that further offences need to be registered against the accused. The petitioner has then prayed for grant of stay on alleged illegal movement of pro-kabbadi. We gave a patient hearing to the petitioner appearing in person and he kept on insisting that the matter needs to be re-investigated. He further submitted that the Investigating Agency committed a grave illegality by continuing with the investigation and submitting 'C' Summary report, whereas in the earlier writ petition filed by the accused, this Court had specifically directed that the

chargesheet ought not to be filed without the leave of this Court. On this basis, the petitioner vehemently submitted that such 'C' Summary Report ought to be ignored, the order passed by the Metropolitan Magistrate on 13.8.2019 ought to be set aside and the accused need to be proceeded against for offences under the Indian Penal Code also.

10. Mr. Yagnik, learned APP appearing on behalf of respondent-State submitted that the petitioner was not entitled to make such submissions before this Court when he had participated in the proceedings before the Magistrate, pursuant to order dt.15.7.2019 passed by this Court in Cr. Writ Petition No.671/2015. It is further submitted that, if at all, the petitioner was aggrieved by the order dt.13.8.2019 passed by the Metropolitan Magistrate, he could avail of the remedy of filing a revision before the Sessions Court.

11. We have given our anxious consideration to the contentions raised by the petitioner who has appeared in person. In view of the order dt.15.7.2019 passed by this Court in Cr. Writ Petition No.671/2015, relevant portion of which is quoted herein above, it becomes clear that the contentions raised by the petitioner about the alleged illegality on the part of the investigating agency in submitting 'C' Summary Report, cannot be accepted. In fact, in para-4 of the order dt. 15.7.2019, quoted above, this very argument had been raised

on behalf of the petitioner herein and the same was rejected. It was thereafter that this Court in the aforesaid order directed the Metropolitan Magistrate to dispose of 'C' Summary Report as expeditiously as possible and after hearing both the sides, including the petitioner herein. Therefore, it cannot now lie in the mouth of the petitioner that the Investigating Agency could not have completed the investigation and filed 'C' Summary Report when this Court had passed an interim order in Cr. Writ Petition No.671/2015 to the effect that chargesheet could be filed only with the leave of this Court. Therefore, the said submission is rejected.

12. Insofar as challenge to the order dt.13.8.2019 passed by the Metropolitan Magistrate is concerned, wherein the protest petition of the petitioner has been dismissed and 'C' Summary is partly accepted, the learned APP is justified in submitting that the petitioner ought to have filed a revision petition before the Sessions Court. The remedy of filing a revision petition was clearly available to the petitioner and he ought not to have rushed in filing the present petition before this Court. At this stage, the petitioner appearing in person vehemently submitted that this Court could exercise its inherent power under Section 482 of the Cr.P.C. to entertain his challenge to the said order dt.13.8.2019 passed by the Metropolitan Magistrate. We are unable to accept the said submission for the reasons that we do not find any

extraordinary circumstances or miscarriage of justice to invoke our inherent powers under Section 482 of the Cr.P.C. for entertaining such a challenge in the present writ Petition against the aforesaid order of Metropolitan Magistrate. Even otherwise, the petitioner participated in the proceedings before the Metropolitan Magistrate by filing protest petition and for this reason also we decline to exercise our jurisdiction under Section 482 of Cr.P.C.

13. The remedy of filing a revision petition was certainly available to the petitioner to challenge the said order dt.13.8.2019 passed by the Metropolitan Magistrate. Therefore, we decline to entertain the present writ petition insofar as the prayer in respect of order dt.13.8.2019 of the Metropolitan Magistrate is concerned.

14. We are of the opinion that the petitioner is at liberty to file an appropriate revision petition before the Sessions Court to challenge the said order. Accordingly, we dismiss the present writ petition with liberty to the petitioner to avail of the said remedy of filing revision petition before the Sessions Court to challenge the order dt.13.8.2019 passed by the Metropolitan Magistrate. If such a revision petition is filed before the Sessions Court by the petitioner within a period of 4 weeks from today, the said Court shall sympathetically consider the aspect of limitation, considering the fact that the petitioner approached

this Court by filing instant writ petition in October 2019 itself and also because the petitioner has appeared in person to pursue the present writ petition.

15. The Writ Petition is dismissed with aforesaid observations.

16. We have not expressed any opinion on merits of the matter and all the contentions on merits are kept open to be agitated before an appropriate forum.

(MANISH PITALE,J)

(S.S. SHINDE,J)

L.S. Panjwani, P.S.