

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO.281/2020

Mr. Mitesh Bhagadiya

..Vs..

State of Maharashtra and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.P Bhandarkar, Advocate for the petitioner.
Ms K.S. Joshi, I/c. Public Prosecutor for respondent Nos.1 and 2.
Ms PS. Chaudhari, Advocate h/f Shri S.A. Chaudhari, Advocate for
respondent Nos.3 and 4.
Shri D.V. Chauhan, Advocate for respondent No.5.

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED :- 13.1.2021.

1. Heard Shri S.P. Bhandarkar, Advocate for the petitioner, Ms K.S. Joshi, In-charge Public Prosecutor for respondent Nos.1 and 2, Ms PS. Chaudhari, Advocate for respondent Nos.3 and 4 and Shri D.V. Chauhan, Advocate for respondent No.5.

2. This petition prays for issuance of a writ of mandamus to respondent Nos.2 to 4 to take cognizance of the illegal events which are illustrated in the F.I.R. against respondent No.5 and to register offences punishable under Sections 120-B, 406, 417, 420, 426, 465, 468 read with Section 34 of the Indian Penal Code and also for confiscation of the passport of respondent No.5 during pendency of the petition. This confiscation is impounding

of the passport which was the fact communicated by the letter dated 18.12.2020 which was dispatched on 20.12.2020. But, the documents filed on record by respondent No.5 show that before the letter dated 18.12.2020 was received by respondent No.5, respondent No.5 had already surrendered his passport before the Authorities of respondent No.4 on 21.12.2020 which is evident from the surrender certificate. The gist of the allegations is that respondent No.5, an elected representative of people, by knowingly giving false information to the Passport Authorities, managed to obtain an Indian passport and thereby committed various offences of serious nature.

3. The allegations would show that if any enquiry is to be made, it has to start with the office of respondent No.4 for the reason that the passport in question was lastly renewed by the office of respondent No.4. From the reply filed on record on behalf of respondent No.4, we find that such enquiry has already been initiated against respondent No.5 by respondent No.4 and the issue is still under consideration of respondent No.4. According to Shri Bhandarkar, learned counsel for the petitioner, the result of the enquiry is already known and, therefore, now the directions as sought for in the petition be issued to the Authorities regarding registration of the offences. Although, it is stated in the reply of respondent No.4 that the reply submitted by respondent No.5 to the show cause notice dated 14.3.2018 has been found unsatisfactory, leading to initiation of process against respondent No.5 for

impounding of the passport, we find from the documents filed on record by respondent No.5 that there has been subsequent show cause notice issued by respondent No.4 to respondent No.5 which has been replied to by respondent No.5 and that now the reply given by respondent No.5 to the subsequent show cause notice dated 20th July, 2020 is under consideration by respondent No.4. So, it cannot be said, at this stage, that any final conclusion has been drawn by respondent No.4 and if it is so, it would not be possible for us to issue any specific direction to respondent Nos.1 and 2.

4. Apart from what is stated above, on going through the copies of the show cause notice dated 20th July, 2020, it does not become clear as to whether or not Passport Authorities have recorded any *prima facie* finding regarding the forgery committed by respondent No.5 in submitting the false documents to it and also commission of any of the offences as those punishable under Sections 420 and Section 406 of the Indian Penal Code. From the copies of the complaint filed on record by the petitioner also, no such circumstance could be seen as would enable us to draw any *prima facie* inference regarding commission of these offences. Then, under Section 15 of the Passport Act, 1967, previous sanction of the Central Government is necessary for instituting any prosecution against any person in respect of an offence created under the Passport Act. These offences are prescribed in Section 12 of the Passport Act. Presently, the matter still lies in the court of respondent No.4 and all will depend upon the decision

finally taken by respondent No.4. These facts would also enable us to conclude that the petition has been filed quite prematurely.

5. In the circumstances, we are not inclined to make any interference in the matter. The petition stands dismissed as premature.

6. Steno copy of the order be furnished to learned counsel for the parties.

JUDGE

JUDGE

Tambaskar.