

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

42 CRIMINAL WRIT PETITION NO.51 OF 2022

**ASHISH JAGDISH AGRAWAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.S.S. Agrawal, Advocate for the petitioner.
Mr.PN. Kutti, APP for the respondent/State.
Mr.Kshitij H. Surve, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 09.11.2022**

PC :-

01. Heard learned Advocates for the parties.
02. It is case of the petitioner that after he lodged FIR, police started investigation. He wrote a specific letter dated 19.08.2014 to the PI, City Chowk Police Station, Aurangabad, in which he communicated that certain portion which was allegedly stated by him before the police does not find place in his statement. The police, thereafter, filed charge-sheet without any action. He submits that in the charge-sheet also this application is not included. Thus, he alleged that police have not carried out investigation in fair manner and though the nature of injury is serious and he has received

grievous hurt, police have not bothered to collect report from the private hospital, where he was taking treatment.

03. The petitioner, thereafter, has also filed an application in the Court, where the trial is going on, below Exh.24 requesting for direction to the police to record supplementary statement. This application is filed on 04.08.2017 and the same came to be rejected by the Trial Court by order dated 06.03.2021. It is this order which is under challenge in this writ petition.

04. During the course of hearing, the learned Advocate pointed out injury certificate issued by the Casualty Medical Officer, Government College and Hospital dated 01.09.2014, in which the nature of injury is shown to be simple. The learned Advocate for the petitioner submits that in-fact in the certificate issued by a private hospital, namely, Gajanan Hospital, wherein he later-on got admitted, would show that the injuries were grievous. But, the police machinery has not bothered to collect that certificate and has not filed the same on record. Thus, he submits that the application below Exh.24 ought to have been allowed.

05. Heard learned Advocate for respondent No.2. He submits that the application is moved belatedly only with a motive to prolong the trial. He submits that the application was filed for the first time on 04.08.2017. He again invited attention to the injury certificate wherein there is remark by the Medical Officer as “patient was referred by me to surgery for expert opinion and management”. In spite of this, the petitioner did not follow the advice and went to home and thereafter on next day he got admitted in the private hospital. This shows that even the petitioner was not serious and he did not act as per the advice. If the petitioner was diligent, he should have moved application at initial stage itself and there is no justification for making the application after three years of the incident.

06. Learned APP for the respondent/State submits that the impugned order is rightly passed, considering Supreme Court judgments. Both the advocates for the respondents, prayed for rejection of the petition.

07. Considered the judgments reported in the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others reported in (2013) AIR (SCW) 220, in which

it is held that the Courts have ample power to direct re-investigation to see that there is fair and proper investigation by the prosecution. Another judgment is in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others reported in (1999) AIR (SCW) 2429, wherein it is held that Magistrate can direct re-investigation by the police.

08. With great respect, there is no dispute about the proposition as appeared in both the judgments. Only question is at what stage it needs to be considered.

09. Considering the present case, it appears that the petitioner had come to know that certain portion which was allegedly stated before the police does not form part of his statement and therefore he had immediately made communication dated 19.08.2014 to the PI. However, it does not appear that thereafter he persuaded the matter. Learned Advocate for the petitioner submits on query that he was orally making requests to the police authority, however, there is nothing on record to show the same. The petitioner, thereafter, filed application only on 04.08.2017 for the first time

praying for directions to the police to carry out further investigation, which is rejected by the learned Courts below. This Court is of the opinion that the learned Court below has rightly rejected the application by considering the judgment passed by the Hon'ble Supreme Court in the case of **Muthaiah Vs. State represented by Inspector of Police, reported in 2006 CJ (SC) 707**. The Court below has rightly observed that the complainant has every opportunity to adduce documents in accordance with the ratio laid down in the case of **Muthiah (supra)**. This Court does not find that a case is made out calling for any interference in the impugned order at the hands of this Court.

10. The Criminal Writ Petition is dismissed with no order as to costs.
11. Needless to say that the observations made in this order shall not come in the way of either of the parties in the Trial Court. The learned Trial Court shall endeavour to expedite the trial.

[KISHORE C. SANT, J.]