

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.622 OF 2022

UMAKANT S/O KISAN THORVE

VERSUS

STATE OF MAHARASHTRA AND OTHERS

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Mr. A. G. Choudhary, Advocate for the petitioner.
Mr. S. J. Salgare, APP for the respondents – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 29th July, 2022

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

1. Present petition has been filed by invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India and also the inherent powers under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for giving directions to respondent Nos.2 to 4 to register the offence against the accused persons, who were responsible for the forcible dispossession of the petitioner's family from their dwelling house.

2. Heard learned Advocate Mr. A. G. Choudhary for the petitioner and learned APP Mr. S. J. Salgare for the respondents – State.

3. It has been vehemently submitted on behalf of the petitioner that the petitioner was in need of residential premises and,

therefore, approached one Bhimrao Ahok Shinde. Considering the requirements of the petitioner, the premises was handed over to the family of the petitioner on rent and it was orally agreed that the period of oral agreement would be three years. Petitioner gave amount of Rs.30,000/- by way of deposit and the monthly rent that was agreed was Rs.3,000/-. The petitioner started residing at the premises with his wife and two sons. The petitioner had also carried out the necessary repairs to make the premises habitable. He was paying rent to the landlord Bhimrao Ashok Shinde on regular basis. It is his say that in the month of May, 2021, the landlord and his son started demanding the premises to be made vacant by the petitioner, but when it was reminded by the petitioner that oral agreement was for a period of three years, yet they were not in a mood to listen. The landlord and his son started giving threats to kill the petitioner and his family members. The police had not taken cognizance of the complaint filed by the son of the petitioner. Petitioner was given threat by the police that the petitioner and his family would be roped in offence under MCOCA. Therefore, Criminal Miscellaneous Application No.758 of 2021 was filed by the son of the petitioner before the learned Chief Judicial Magistrate, Ahmednagar. The episode of giving threats continued and about 10 to 15 persons unauthorizedly entered the in house of the petitioner along with two sons of the landlord at about 7.30 a.m. on

11.04.2022. They had thrown all the belongings of the petitioner outside the house. They had committed robbery as well as theft of valuable articles. Petitioner gave phone call to the police helpline, but no help was provided. Though the son of the petitioner had immediately filed application to Superintendent of Police, no substantial complaint was taken, but only non cognizable offence was registered. Under such circumstance, it is necessary to give direction to the respondents to lodge appropriate complaint. The say of the complainant is supported by documentary evidence and the photographs.

4. Per contra, learned APP submitted the affidavit of Juberahmed s/o Chandsaheb Mujawar, who is serving as Assistant Police Inspector in Tophkhana Police Station, Ahmednagar and certain documents have been annexed. It is stated that the son of the petitioner had filed complaint with S.P. Office on 11.04.2022 and after receiving the said complaint from S.P. Office, Tophkhana Police Station had time and again called the son of the petitioner to lodge a proper report. In fact, on the basis of whatever was disclosed initially, non cognizable offence was registered on 11.04.2022. It was disclosed at that time that accused had abused him in filthy language and caused damage to the belongings of the petitioner, which were kept outside the house. In fact, the son of the landlord had lodged report on 11.04.2022 against the petitioner and his

family members stating that they have committed offence under Sections 386, 347, 506, 143, 147 and 149 of IPC. In connection with the same, the petitioner was arrested on 11.04.2022 and was released on bail on 12.04.2022. The son of the petitioner namely Tushar was absconding till he got protection from the Court i.e. 29.04.2022. The son of the petitioner had not turned up and, therefore, the offence was not registered. No question for issuing directions to the respondents to lodge a cognizable offence would arise, as it was inaction on the part of the petitioner to approach the police station. The documents along with affidavit-in-reply would show that a letter was given to Tushar Umakant Thorve on 25.06.2022 stating that there is contradiction in the FIR's or complaints those have been filed. It was then again specifically told that the video recording or any other evidence was not given to the police till 25.06.2022. By that letter, Tushar Thorve was called upon to submit the evidence which was available with him and, thereafter, it appears that said Tushar went to the police station and his statement has been recorded on 27.06.2022. On the basis of that statement/FIR offence vide Crime No.541 of 2022 came to be registered with Tophkhana Police Station, Ahmednagar for the offences punishable under Sections 452, 380, 509, 506 and 143 of IPC and, therefore, there is no question of giving directions to the respondents to lodge a report.

5. At the outset, it is to be noted that the petitioner has not explained as to why he himself has not gone to the police station and when his son had gone, then why statement disclosing non cognizable offence was only given. No doubt, his complaint application before the learned Chief Judicial Magistrate in respect of another incident that had taken place on 21.06.2021 appears to be pending and that incident is not in question in this petition. We are concerned with alleged incident that had allegedly taken place on 11.04.2022. Now, it can be seen that there is communication made by the police officer and then he was required to call upon the son of the petitioner to lodge a report on the basis of complaint application filed by him with Superintendent of Police on 21.06.2022. By notice-cum-letter dated 25.06.2022, he was called and then when he appeared on 27.06.2022 offence vide Crime No.541 of 2022 has been lodged. If there was inaction on the part of the petitioner or his son to approach the police station, the police officers cannot be held responsible for the same and, therefore, this cannot be taken as a fit case where the constitutional powers and/or inherent powers of this Court should be exercised. Hence, the writ petition stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm