

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

CRIMINAL WRIT PETITION NO. 672 OF 2021

Rameshwar s/o Shivaji Darekar,
age: 35 years, Occ: Editor,
R/o Shop No.3, Amaya Avenue,
Behind District Information Office,
Mil Corner, Khadkeshwar,
Aurangabad.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.

02 The Director General of Police,
State Police Headquarters,
Old Council Hall,
Shaheed Bhagat Singh Marg,
Mumbai-1, Maharashtra-400 001.

03 The Special Inspector General of
Police, Division Aurangabad,
Near Baba Petrol Pump,
Aurangabad.

04 The Superintendent of Police,
Jalna, The Superintendent of
Police Office, near Collector
Office, Jalna.

05 The Sub Divisional Police Officer,
Partur, Sub Divisional Police
Office, Partur.

06 The Police Sub Inspector,
Shevali, The Police Station,
Shevali, Tq. & District Jalna.

Respondents

Mr. Vikas S. Bhale, advocate for the petitioner.
Mr. R. V. Dasalkar, APP for Respondents.

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 13th January, 2022.

ORAL JUDGMENT (Per V. K. Jadhav, J.) :

1 Leave to amend prayer clause "B".

2 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 By this writ petition, the petitioner is seeking a direction to Respondents to take necessary action against Assistant Police Inspector – Vilas Shrimant More of Police Station Shevali, Taluka and District Jalna, as per the complaint dated 28.04.2021 filed by the petitioner.

4 Learned Counsel for the petitioner submits that petitioner is the Editor of Daily Newspaper 'Buland Shakti', Aurangabad. The petitioner has published a news against A. P. I. Vilas More of Police Station Shevali, about his corruption, etc. On account of publication of said news against A. P. I. Vilas More, the

Vice President of Anti-corruption & Crime Control Committee, has given representation on 17.04.2021 to the Chief Minister, Government of Maharashtra. Thereafter on 22.04.2021, one Asaram Devidas Bahekar, District President of Rayat Kranti Sanghatana, Social Media, Jalna, has also made representation to Shevali Police Station in respect of the said news published against A. P. I. Vilas More. Learned Counsel for the petitioner submits that thereafter directly or indirectly A. P. I. Vilas More started threatening to the petitioner. However, the petitioner has not paid any heed to his threatening.

5 The learned Counsel submits that the alleged incident had taken place on 23.04.2021 at about 2.30 to 03.00 p.m. at Vazar-Sarkate Check Post. A. P. I. Vilas More and 6 to 8 Police Constables have extended beating to the brother of petitioner, namely Parsaram Shivaji Darekar due to which brother of the petitioner became unconscious. He sustained head injury and multiple abrasions. Petitioner's brother Parsaram was admitted in Santkripa Hospital at Jalna from 23.04.2021 to 24.04.2021 and thereafter shifted to JJ Plus Hospital at Aurangabad. Ultimately, he was discharged on 28.04.2021 and he was under follow up and treatment of Dr. Jitendra Rajput, JJ Plus Hospital, Aurangabad,

till the date of filing of the petition. The learned Counsel submits that copy of the discharge summary issued by the JJ Plus Hospital, Aurangabad, is annexed with the petition and marked as Exhibit-E.

6 Learned Counsel for the petitioner submits that the petitioner has given representation dated 28.04.2021 to the District Superintendent of Police, Jalna – Respondent No.4, however, neither action has been taken on the representation/complaint filed by the petitioner nor the police authorities have registered First Information Report.

7 Learned Counsel for the petitioner submits that the incident is not denied, however, it has been falsely stated that the brother of the petitioner, namely Parsaram was making a scene by video recording certain irregularities at the said check post and at that time, he was not obeying commands of the police persons deputed there. Therefore, A. P. I. More took him in a police jeep to Police Station Shevali. It has been falsely posed that brother of the petitioner, namely Parsaram jumped from the back portion of the police jeep on the road and in consequence thereof, sustained injuries. The learned Counsel submits that neither crime has

been registered nor investigation has been carried out in this regard.

8 The learned Counsel for the petitioner submits that in terms of the ratio laid down by the Hon'ble Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh & others**, 2014 AIR (SC) 187, registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Learned Counsel for the petitioner submits that, in the instant case, brother of the petitioner was mercilessly beaten and for some time his condition was critical. He was treated in the hospital with the history of assault and even then deliberately, in some papers at the Primary Health Centre of Shevali, history was falsely recorded as "injuries sustained by jumping from the police vehicle".

9 The learned A. P. P. submits that A. P. I. More came to be transferred from Shevali Police Station and present A. P. I. Nityanand N. Ubale, Police Station, Shevali, has inquired into the application dated 28.04.2021 filed by the petitioner. He has also recorded statements of witnesses, including some independent

persons. It has been revealed during the said inquiry that said Parsaram (brother of the petitioner) was under the influence of liquor and he was video shooting the incoming and outgoing vehicles at the Vazar-Sarkate Police Check Post. He was also informing on phone to his brother (petitioner – Rameshwar) that one truck loaded with sand proceeded from the said check post. He was also questioning the police persons deputed there as to why they did not stop the truck transporting sand illegally. It has been further revealed that, at that time, A. P. I. Vilas More came there in a police jeep and he tried to give understanding to brother of the petitioner, namely Parsaram, however, he was not ready to listen to him. Thus, A. P. I. Vilas More took Parsaram in the police vehicle and no beating was extended to Parsaram, in any manner, at the check post. It has been further revealed during the said inquiry that when the police vehicle was proceeding towards Shevali, at one speed breaker near one hotel, driver of the police vehicle slowed down speed of the vehicle and at that time, Parsaram opened back door of the vehicle and jumped down from the police vehicle. Thereafter injured Parsaram was taken to Shevali Primary Health Centre where he was initially treated and thereafter was shifted to Santkripa Hospital, near Mantha Choufuli, Jalna. The learned A. P. P. submits that even at the

Primary Health Centre, Shevali, the history is recorded as “due to jumping down from the police vehicle”. The learned A. P. P. submits that there is no substance in this petition and the same is liable to be dismissed.

10 We have carefully gone through the inquiry report, medical case papers and the petition along with annexures thereto. On perusal of the inquiry report, we have noticed that on 27.04.2021, when said Parsaram was admitted in JJ Plus Hospital at Aurangabad, his statement came to be recorded by Police Naik Navnath S. Gaikwad (B. No. 875) attached to Kranti Chowk Police Station, Aurangabad. In the said statement, Parsaram has narrated the entire incident in detail. He has stated, in his statement, that on 2304.2021 at about 11 a.m. , he was proceeding on the motorcycle of his friend Sachin Parasram Rathod towards Wadgaon, Taluka Mantha and on way, at one police check post, they were stopped by the police persons. A. P. I. Vilas More was also there along with 3 / 4 Police Constables. They have started beating Parsaram. His friend Sachin ran away from that place. Parsaram was severely beaten by the police on his back, right shoulder, left leg and on head. He became unconscious on the spot. Statement of Parsaram was recorded on the basis of MLC

intimation given by the concerned doctor of JJ Plus Hospital at Aurangabad on 24.04.2021. In the said MLC intimation, it has been specifically stated that said Parsaram was injured due to beating at Changefal-Bellora fata Police Check post of Police Station Shevali and he had sustained head injury. On the said MLC intimation, there is an endorsement of PSO, Police Station Kranti Chowk, Aurangabad, that the station diary entry no.23 was taken on the said basis at about 12.55 vide MLC No. 0/154/2021 and said Police Naik Navnath Gaikwad (B. No. 875) was assigned with the inquiry of said MLC.

11 As we have discussed earlier, said Police Naik Navnath (B. No. 875) has recorded statement of Parsaram while he was under treatment of doctors of JJ Plus Hospital, Aurangabad. We have also gone through the progress continuation sheet of JJ Plus Hospital, which is the part of the Inquiry Report wherein case history is given as “assault” and that the “patient has sustained head injury”.

12 We have also perused the case papers of Santkripa Hospital, Jalna. Parsaram was taken to the said hospital by the police. Obviously, the history is recorded as jumped down from the

running police vehicle, however, description of the injury sustained is recorded as “Contusion to scalp with certain abrasions”. So far as scalp injury is concerned, it is observed that there is mild cerebral edema, minimal subarachnoid hemorrhage with certain other complications. We are unable to pursue ourselves that the said injury was the result of jumping down from the vehicle. *Prima facie*, it appears that the said injury was caused by smash and not by accident. We are unable to understand, as per the police story, if the police vehicle slowed down at the speed breaker, even then how by jumping down, injury to scalp is possible. Though the learned A. P. P. has tried to pursue us by showing the history recorded in the medical case papers of Primary Health Centre Shevali however, we are not impressed by the said submission, because initially when injured Parsaram was taken by the police to the Primary Health Centre at Shevali, Parsaram was not in a position to narrate the history.

13 In the case of **Lalita Kumari** (*supra*), the Hon’ble Supreme Court, in para 111, has held as under:

“111 In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered, in cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes / family disputes

(b) Commercial disputes

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reason for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(vii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

14 In the instant case, in terms of the above observations made by the Hon’ble Supreme Court, registration of the FIR is mandatory since the information discloses commission of a cognizable offence. In no case, preliminary inquiry is permissible. However, it appears that preliminary inquiry has been carried out to protect the police officials.

15 Thus, considering the entire aspects of the matter, it is

necessary to give directions to the concerned authorities to register First Information Report against the person/s named as accused in the representation/complaint filed by the petitioner so also in terms of the statement of Parasram, recorded at JJ Plus Hospital at Aurangabad by Police Naik Navnath Gaikwad (B. No. 875), Kranti Chowk Police Station, Aurangabad.

16 Hence, the following order:

(A) Writ Petition is allowed in terms of prayer clause "B".

(B) Rule is made absolute in above terms.

17 Writ Petition is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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