

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

CRIMINAL WRIT PETITION NO. 1177 OF 2021

Govardhan @ Pappu S/o Balasaheb Gund	]	
Age : 30 Years, Occu : Business & Agri.,	]	
R/o Katalweda, Tq. Parner, Dist. Ahmednagar.	]	... Petitioner.

Versus

- | | | | |
|----|---------------------------------------|---|--|
| 1. | The State of Maharashtra |] | |
| 2. | Superintendent of Police, |] | |
| | Superintend Office, Ahmednagar. |] | |
| 3. | Ghanshyam Balap |] | |
| | Age : Major, Occ. : Police Inspector, |] | |
| | R/o Parner Police Station, |] | |
| | Parner, Ahmednagar |] | |
| 4. | Suraj Kadam, |] | |
| | Age : Major, Occ. : Constable, |] | |
| | R/o Parner Police Station, |] | |
| | Parner, Ahmednagar. |] | |
| 5. | Satyam Shinde, |] | |
| | Age : Major, Occ. : Constable, |] | |
| | R/o Parner Police Station, |] | |
| | Parner, Ahmednagar. |] | |
| 6. | Bhalchandra Divte, |] | |
| | Age : Major, Occ. : Constable, |] | |
| | R/o. Parner Police Station, |] | |
| | Parner, Ahmednagar. |] | |
| 7. | Ashok Kharabi, |] | |
| | Age : Major, Occ. : Business, |] | |
| | R/o. Tikhhol, Tq. Parner, |] | |
| | Dist. Ahmednagar. |] | |

8. Ganesh Pacharane,]
 Age : Major, Occ. : Business,]
 R/o. Gujar Mala, Shirur,]
 Tq. Shirur, District Pune.] ... Respondents.

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Mr. Nilesh S. Ghanekar, Advocate for Petitioner.
 Mr. M. M. Nerlikar, APP for Respondents – State.

...

**CORAM : MANGESH S. PATIL AND
 ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 19 OCTOBER 2022

PRONOUNCED ON : 16 NOVEMBER 2022

JUDGEMENT (ABHAY S. WAGHWASE, J.) :

Rule. Rule is made returnable forthwith. By consent of the parties, the matter is heard finally at admission stage.

2. By invoking Article 226 of the Constitution of India, petitioner herein has prayed for registration of crime against respondent Nos. 3 to 8 along with prayers for directions to preserve CDR, SDR as well as tower locations of mobile numbers reproduced in the prayer clause (C) of the writ petition.

3. We have heard both sides at length. We have also carefully and minutely gone through the documents placed before us.

PETITIONER'S CASE

4. Petitioner herein claims to be an agriculturist and businessman and claims to own dumper bearing No. MH-46-AF-6040. It is his specific case that he is not involved in excavating or transporting sand from river bed or selling the same. However, according to him, respondent No.4 police personnel attached to Parner Police Station, along with his colleagues, was regularly demanding '*hafta*' alleging illegal excavation and transportation of sand and they were threatening to implicate him in a crime. As petitioner did not yield to the above demand, he is falsely implicated.

On 25.06.2021, while he was attending last rituals of his distant relative at village Bota, and when his dumper was near the house of one Chaudhari at Khadakwadi, he learnt from his relatives that wet sand was being uploaded in the said dumper by respondent No.4 and his colleagues. His relatives apprised the police that the dumper belongs to petitioner and that he is at outstation, however no heed was paid to it and the dumper was forcibly taken away to Parner Police Station alleging breach of provisions of the Indian Penal Code and the Environment (Protection) Act, 1986.

It is his further contention that when he went to Parner Police Station and requested for release of his vehicle, he was informed that his vehicle was

already seized and it could be released only on production of challan/permit. Further, according to him, respondent Nos. 5 and 6 suggested that if he paid Rs.25,000/-, challan/permit could be arranged. Thereafter, respondent No.5 himself arranged blank challan/permit of Tahsil Shirur and petitioner was asked registration number of his vehicle and on seeking details, the same were noted by police personnel themselves and thereby they had prepared challan. Petitioner was asked to pay amount, but as he was not carrying cash, he was asked to hand it over to their middleman/agent and further he was asked to bring Rs.2,00,000/- to be paid to respondent No.7 so as to escape from legal action.

It is contended that as petitioner was unable to raise the amount, he made application to Anti-corruption department at Pune informing about the illegal demand. The Anti-corruption personnel also came to Dhotre Village for laying trap, but respondents herein already sensed about the trap and so the middlemen did not turn up to accept the cash and as such, the trap failed. According to petitioner, there is text message recorded in the data of his mobile as well as call details regarding conversation between petitioner and respondents herein are also preserved.

Lastly, it is submitted that only because of his failure to meet the illegal demand of police personnel of Parner Police Station, i.e. respondents herein,

and getting annoyed by the complaint lodged with anti-corruption department, the respondent Police authorities connived, fabricated false challan and attributed its manufacturing to petitioner and registered crime against him bearing No. 501 of 2021 for offences under sections 420, 465, 467, 468, 471, 474, 120-B, 379 and 201 read with 34 of Indian Penal Code and under the provisions of the Environment (Protection) Act, 1986.

5. According to petitioner, the above complaint is motivated one. He is implicated with ulterior motive. Respondent Nos. 3 to 8 Police authorities posted at Parner Police Station themselves have committed the above offence. In spite of complaint being lodged at higher Police authorities, no action is initiated and police machinery is avoiding registration of crime against respondent Nos. 3 to 8 and thereby trying to save and screen them from legal action. Hence the prayer for registration of crime against respondent Nos.3 to 8.

SAY OF THE RESPONDENTS

6. It is the say of respondent authorities that, respondent no.4 police constable Suraj Kadam and other police constables were a part of special team for detection and investigation of crime. On 25.06.2021 secret information was received about illegal activities being carried out in Khadakwadi, Mandawa area and therefore, team comprising of Police Constable Suraj

Kadam, Police Constable Satyam Shinde, Homeguards Sharad Shelke and Adesh Gunjal visited the said area and they came across dumper bearing MH-46-AF-4060 heading towards Borwak on Khadakwadi to Pokhari Road. The said dumper was chased by the squad. Seeing police, the driver drove the dumper in high speed and later on abandoned it and took to his heels. The squad inspected the dumper and found that wet sand was loaded in the dumper. Two persons, namely, Vaibhav Chaudhari and Sanket Jadhav approached the squad and informed about truck/dumper to be owned by present petitioner. The driver was searched for, but was not found. It is their case that at such time, petitioner telephoned the police officer and the officer told petitioner to send the dumper driver immediately. Thereafter, Police Inspector ordered the police squad to take the dumper to police station and accordingly it was brought there and seized.

7. According to respondents, petitioner approached police station and informed that he had transport permit and he was ready to produce the same. Around 21:30 hours, petitioner visited police station with local leaders and alleged false implication. Petitioner informed that transport permit was with the driver and that he would bring him.

8. Subsequently, petitioner produced challan bearing no.1177331, dated 25.06.2021 time 1:20 hours to 26.06.2021 time 1:20 hours regarding an

auction made in favour of Shekhar Ramdas Zanjhad for Raj Enterprises under the order of Tahsil Office, Shirur bearing No. Minor/Minerals/ Desk/575/2021 dated 19.05.2021.

9. The case put forth by the respondents is that, entry of the document produced by the petitioner was taken in the diary and dumper was released and handed over to the petitioner.

10. It is pointed out that on 26.06.2021, Police Inspector directed verification of the transport permit and to find out whether the said permit was as per the transport proforma submitted in court in crime bearing No. 455 of 2021 registered at Parner Police Station for offence under section 379 of IPC read with section 3/15 of the Mines & Minerals Act. On undertaking said exercise, it was noticed that crime No. 455 of 2021 was registered on 22.06.2021 itself and transport permit was also submitted in the court of law, i.e. permits bearing Nos. 1177332 and 1177333. Realizing mismatching of dates and transport permit numbers, suspicion was entertained about genuineness of the copy of transport challan/permit submitted by the petitioner herein and therefore further exercise of verification of the said copy was got done through Tahsil Office, Shirur by making communication. Tahsil Office responded by a communication dated 08.07.2021, by which it was

opined that as per daily report dated 30.06.2021 submitted by the auction purchaser, the transport permit no.1177331 referred to in auction was in fact issued for Tata Truck vehicle bearing No. MH-12-SX-4851 in the name of one Bhagwan Kendre, resident of Vasande, Taluka Parner on 25.06.2021 itself. It was opined that signatures over transport permit Nos. 1177332 and 1177333 and the signature over transport permit No. 1177331 were distinct.

11. Thus, according to respondents, petitioner herein has committed theft by illegally excavating three barass sand worth Rs.18,000/- and has submitted forged and fabricated documents to play fraud on the Government and mislead the police machinery and therefore crime bearing No. 501 of 2021 was registered on the complaint lodged by respondent No.4.

Papers of investigation pertaining to above and subsequent investigation are tendered to this Court for our consideration and lastly it is submitted that there is ample evidence, in the form of oral and documentary evidence, against present petitioner regarding his involvement in above crime. Thus, present writ petition is clearly result of annoyance and as a counterblast to the crime registered against petitioner. Papers have been submitted regarding previous crimes registered against present petitioner. While concluding, it is their case that false, frivolous petition has been filed and hence the same is sought to be dismissed.

ANALYSIS AND REASONING

12. After considering the submissions of both sides and on going through the record, the question that arises for consideration is as under:

Whether petitioner has demonstrated that respondent nos. 3 to 8, in connivance, getting annoyed on account of non fulfillment of illegal demand, fabricated a challan and attributed it to the petitioner and falsely implicated him in crime no. 501 of 2021 and are thereby liable to be booked for the said act?

13. Petitioner's case in sum and substance is that he is not involved in excavation of sand or its transportation. But respondents police personnel still demanded *hafta* from him. As he did not fulfill their demand, his dumper was seized and for releasing the same, amounts were demanded. When he did not meet their such demand, they themselves fabricated a challan and attributed it to petitioner and falsely implicated him in the crime. That in fact, police personnel themselves have committed various offences under IPC, and he seeks registration of the same.

14. While refuting the above contentions raised in the petition, respondent authorities have placed on record police papers pertaining to registration of crime no. 501/2021. We have minutely examined such documents. It seems that present respondent no.4 Suraj Kadam has lodged complaint on 08.07.2021 alleging that on 25.06.2021 when he and his colleagues, who

were part of a crime detection team and were patrolling in the vicinity of Khadakwadi, they came across dumper bearing no. MH-46-AF-6040 being used for illegally uploading wet sand. Complainant claims that seeing the raiding party, driver of the said dumper went speeding from the spot and was thus chased. Midway, the driver decamped from the dumper, left it on the spot and made his escape good. The team checked the dumper and claim to come across 3 barass wet sand. The driver did not wait to show the permit/challan and rather ran away. When the petitioner was telephonically asked to sent the dumper driver, he denied for the same and therefore dumper was seized and brought to the police station. Later on, petitioner approached said police station and when he was asked to produce permit/challan of the sand, he assured to produce as it was with the driver and at later point of time, he came and handed over the challan in question. It was taken on record by police and thereafter, said dumper was released.

It is their specific case that in-charge Police Inspector got suspicious about the copy of challan produced by the petitioner and therefore, its verification was got done through Tahsil authorities, who by making communication, conveyed that the said challan bearing no. 1177331 was not in respect of dumper bearing no. MH-46-AF-4060, rather it was pertaining to Tata truck bearing No. MH-12-SX-4851 standing in the name of Bhagwan Kendre. It was also revealed to the police machinery that the above challan

was already tendered in another crime and is made a part of police papers before the court of law. Thus, police authorities reached to a conclusion that petitioner herein had fabricated and manufactured challan and tendered the same for getting his vehicle released and hence registration of crime no. 501/2021.

15. The police papers placed on record include not only statements of police personnel who were party to the raid, but also police personnel posted at Parner Police Station and private citizens. Statements of all relevant witnesses are not only recorded under Section 161 of Cr.P.C. but also under Section 164 of Cr.P.C. Communication made to Tahsil Office, Shirur and the response and report received from them is also part of the compilation tendered by police machinery before this Court.

16. It is pertinent to note that ownership of the dumper has not been denied by petitioner herein. Though in petition he claims to be not involved in excavation and transportation of sand, there are statements of acquaintances of petitioner himself, regarding police machinery seizing the dumper containing sand and it being taken to the police station. Police has also measured the quantity of sand found during the seizure. An attempt has been made by petitioner to put up a case that it is the respondent police personnel themselves who uploaded sand in his dumper to show that sand was being

illegally transported by petitioner. But no material, either oral or documentary, is coming from petitioner's side to substantiate such claim. On the contrary, police papers show that steps have been taken to seize the dumper and thereafter its entry being taken in police record and subsequently, petitioner himself got back custody of the dumper by producing the questioned permit/challan. Consequently, except placing WhatsApp text message extract, nothing is coming from the petitioner's side in support of his case that police machinery themselves arranged a blank challan and on their own, filled the details on assurance of fulfillment of demand of Rs.25,000/- and thereafter, when the amount was not paid and as information was passed to Anti-corruption department, production of the said challan is falsely attributed to petitioner and he is falsely roped in. No proof of so-called mail to Anti-corruption department, Pune is also placed on record by the petitioner in support of his claim that he alerted the Anti-corruption department to trap and catch respondent police personnel while accepting the demand. For said reasons, the assertions and contentions raised in the petition being without any foundation, cannot be entertained.

17. Record shows that police authorities have received complaints from petitioner and an officer of DySP rank has conducted inquiry and has already reached to a conclusion that the complaint is false and baseless. Reports to that extent are forwarded to this Court as well as learned Sessions Court.

18. Therefore, there is no merit or substance in the allegations raised by the petitioner against respondent nos. 3 to 8. As discussed above, there is no supporting material from his side so as to consider and grant the relief put forth by him. Resultantly, no case being made out for grant of relief, we proceed to pass following order :

ORDER

I The Writ Petition is dismissed.

II. Rule is discharged.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

Tandale/-