

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.3808 OF 2021

Priya Paul
Age – 37 years
An adult Indian inhabitant,
Occupation: Service
having her address at
Shankaram Shivam
Residency, Ghatla,
Chembur (East),
Mumbai – 400 071.

...Petitioner

Versus

1. State of Maharashtra
through the Senior
Inspector of Police,
Azad Maidan Police
Station, Mumbai.
2. Khushnuma H. Behram
Adult, Indian inhabitant,
having her place of residence at
286, Bhatia Society Building,
“A” Block, 4th Floor, Princess Street,
Mumbai – 400 002.

...Respondents

***WITH
CRIMINAL WRIT PETITION NO.3813 OF 2021***

1. Vaishali Chavan
Age – 47 years
An adult Indian inhabitant

having her address at
701, Mantri Sujata,
701, Saraswati Road,
Saraswat Colony, Santacruz (West),
Mumbai – 400 055.

2. Ramkrishnan S.
Age – 49 years
An adult Indian inhabitant,
Occupation: Service
having his address at
101, Silver Sands, 73,
Carter Road, Bandra West,
Mumbai – 400 050.
3. Animesh Raizada
Age – 46 years
An adult Indian inhabitant
having his address at
B705, Krishna Regency,
Datta Mandir Road,
Vakola, Santacruz East,
Mumbai 400 055.
4. Mayur Patni
Age – 44 years
An adult Indian inhabitant,
Occupation: Service
having his address at
Kalpataru Estate,
Bldg 1C, Flat 93,
Jogeshwari Vikhroli Link Road,
(Landmark: Majas Bus depot),
Andheri East.
Mumbai 400 093.

...Petitioners

Versus

1. State of Maharashtra
Through the Senior
Inspector of Police,
Azad Maidan Police Station,
Mumbai.
2. Khushnuma H. Behram
Adult, Indian inhabitant,
having her place of residence at
Plot No.3, Vakharia House,
N.S. No. 9, JVPD, Vile Parle (W),
Mumbai – 400 049. ...Respondents

Mr. Pranav Badheka a/w Mr. Aditya Mithe, Mr. Rajendra Barot, Mr. Dhirajkumar Totala, Mr. Amey Mirajkar, Ms. Praneeta Ragjji and Mr. Parimal Kashyap i/b AZB and Partners, for the Petitioners.

Ms. S. D. Shinde, A.P.P for the Respondent No.1 – State.

Mr. Raja Thakare, Senior Advocate a/w Mr. Pervez Rustom Khan and Ms. Diksha Shetty i/b AAK Legal, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.***

DATE : 13th OCTOBER 2022

JUDGMENT (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Learned counsel for the respondent No.2 waives notice on behalf of the respondent No.2.

3. By these petitions, preferred under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, the petitioners seeks quashing and setting aside of the impugned order dated 29th July 2019, passed by the State Police Complaints Authority, Maharashtra State, Mumbai, (hereinafter referred to as the ‘SPCA’), in SPCA/Complaint Case No.579 of 2018, on the premise that the said authority had no jurisdiction to direct the police to register an offence, and, consequently the FIR registered pursuant to the said order, being C.R. No. 264 of 2019 dated 12th November 2019, with the Azad Maidan Police Station, Mumbai, for the alleged offences punishable under Sections 409, 464, 465, 468, 471, 120B r/w 34 of the Indian Penal Code.

4. Quashing is essentially sought on the premise, that the SPCA had no authority in law to give directions to the police for registration of an FIR and that the SPCA in giving such a direction had clearly exceeded its scope of authority/jurisdiction.

5. Learned counsel for the petitioners submitted that it is well settled that if the initial action itself is not in consonance with the law, all subsequent and consequential proceedings would have to be set aside and cannot be sustained and as such are liable to be declared non est. In support of the said submission, learned counsel for the petitioners relied on the judgment of the Apex Court in the case of *State of Punjab v/s Davinder Pal Singh Bhullar and Others*¹. He submitted that the petitioners have a good case even on merits, however, since the impugned order passed by the SPCA is wholly without jurisdiction, the same ought to be quashed and set aside on this very ground, and consequently, the actions/proceedings arising from the said order.

¹ (2011) 14 SCC 770

6. Learned Senior Counsel for the respondent No.2 although vehemently opposes the petitions on merits, he fairly does not dispute the fact, that the SPCA had no authority in law, to give such a direction. Learned Senior Counsel, however, submits that now that an FIR has been registered pursuant to the said direction, this Court ought not to interfere with the said investigation.

7. The short question that arises for consideration in the aforesaid petitions is, whether the impugned order dated 29th July 2019, passed by the SPCA, in SPCA/Complaint Case No.579 of 2018, can be sustained in law, and, if not, whether the FIR registered pursuant to the said order passed by the SPCA, is also liable to be quashed and set aside.

8. It is pertinent to note that pursuant to the recommendations and directions given by the Apex Court in the case of *Prakash Singh and Others v/s Union of India and Others*², the Police Complaints Authority was constituted. Accordingly, the

² (2006) 8 SCC 1

Maharashtra Police Act, 1951 was amended by the Maharashtra Police (Amendment and Continuance) Act, 2014 and Sections 22P, 22Q(1)(a) and Section 22R were introduced, apart from the other provisions. Accordingly, under Section 22P, the State Police Complaints Authority (SPCA) has been constituted by the State Government, to entertain complaints against police officers and police personnel, who have failed to perform their duties and functions. Section 22Q(1)(a) of the amended Police Act lays down the scope of the jurisdiction of the SPCA. Section **22Q(1)** reads thus;

“22Q. (1) The State Police Complaints Authority shall exercise the powers and perform the functions as follows : –

(a) inquire *suo-moto* or on a complaint against Police Officers presented to it by, –

(i) a victim or any member of his family or any other person on his behalf;

(ii) the National or State Human Rights Commission; and

(iii) the police,
into the complaint of, –

(i) death in police custody;

(ii) grievous hurt as defined under section 320 of the Indian Penal Code;

- (iii) rape or attempt to commit rape;
- (iv) arrest or detention without following the prescribed procedure;
- (v) corruption;
- (vi) extortion;
- (vii) land or house grabbing; and
- (viii) any other matter involving serious violation of any provision of law or abuse of lawful authority;

.... ..”

9. Section 22R(1) and (4) set out the procedure to be followed by the SPCA on completion of its inquiry and the steps to be taken by the State Government upon receiving SPCA’s inquiry report. Section **22R** read thus;

“22R. (1) The State Police Complaints Authority shall, after completing the inquiry, submit a report to the State Government within such time as may be prescribed by the State Government.

(2) On receipt of the report from the State Police Complaints Authority, the State Government shall take any of the following steps: –

- (a) The State Government shall accept the report and act on the same unless the State Government exercises power of rejecting the report as specified in sub-section (3).

(b) Treat the same as a preliminary inquiry for the purpose of instituting disciplinary proceedings and thereafter the State Government or the Competent Authority, as the case may be, shall direct institution of disciplinary proceedings against the delinquent Police Officer.

(c) If the report of the State Police Complaints Authority discloses a *prima facie* case of commission of a cognizable offence, the State Government shall forward the same to the concerned Police Station and thereupon the same may be recorded as First Information Report under section 154 of the Code of Criminal Procedure, 1973.

(3) Notwithstanding anything contained in this Act, the State Government may reject the report of the State Police Complaints Authority in exceptional cases for reasons to be recorded in writing.

(4) In the event of the State Government rejecting the report of the State Police Complaints Authority, it may require the State Police Complaints Authority to hold further inquiry in the matter and submit a fresh report in that behalf.”

10. From a perusal of the aforesaid amended provisions, it is evident that no power vests with the SPCA to direct registration of an FIR. By directing registration of an FIR, the SPCA is seeking to exercise powers of a Magistrate under Section 156(3) of the Code of Criminal Procedure, which is not the intent of the amended provisions. As is evident from Section 22Q(1)(a), the mandate of the

SPCA is to conduct an inquiry against police officers with respect to the acts/offences spelt out in the said provision. Infact, a reading of the provisions of Section 22Q(1) and 22R reveals that the SPCA can only inquire into the allegations pertaining to offences falling under Section 22Q(1)(a) (i) to (viii) and upon completion of its inquiry, forward its report to the State Government for further action. If the report of the SPCA discloses a *prima facie* case of commission of a cognizable offence, the power vests in the State Government, to forward the said report to the concerned police station and thereupon the same may be recorded as an FIR. In the present case, admittedly, it is the SPCA who has directed the police to register an FIR and not the State Government. Although, the learned Counsel for the petitioners submitted that the amended provisions would, by no stretch of imagination, cover a transaction between private persons and that it is not the scope of the SCPA to inquire into a commercial dispute between the parties, we make it clear, that it is not necessary for us to get into this aspect, inasmuch as, the petitions ought to succeed on the sole ground that the SPCA has no power to direct the

police to register an FIR. As noted above, the said legal position is also not disputed by the learned senior counsel for the respondent No.2. The only submission of the learned senior counsel for the respondent No.2 is, that since an FIR has now been registered, pursuant to the direction of the SPCA and since investigation has proceeded, this Court ought not to intervene in the said investigation.

11. The Apex Court in the case of *Davinder Pal Singh Bhullar (supra)* has in paras 107, 110, 111 and 116 observed as under:-

“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

110. In C. Albert Morris v. K. Chandrasekaran³ this Court held that a right in law exists only and only when it has a lawful origin. (See also Upen Chandra Gogoi v. State of Assam⁴, Satchidananda Misra v. State of Orissa⁵, SBI v. Rakesh Kumar Tewari⁶ and Ritesh Tewari v. State of U.P.⁷)

3 (2006) 1 SCC 228

4 (1998) 3 SCC 381

5 (2004) 8 SCC 599

6 (2006) 1 SCC 530

7 (2010) 10 SCC 677

111. *Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/ FIR/investigation stand automatically vitiated and are liable to be declared non est.*

116. *In view of the above, the appeals succeed and are accordingly allowed. The impugned orders challenged herein are declared to be a nullity and as a consequence, the FIR registered by CBI is also quashed. ”*

12. It is also pertinent to note, that the Apex Court in the case of *State of Haryana and Others v/s Bhajan Lal and Others*⁸ has categorised cases, where Courts can exercise their inherent powers to quash an FIR. The present case is squarely covered by category (6) of para 102. Para 102(6) of the said judgment is reproduced hereinunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

8 1992 Supp (1) SCC 335

guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

.... ..

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

13. Thus, the action of the SPCA, directing the Police to register an FIR, not being in consonance with the provisions of the amended Maharashtra Police Act, cannot be sustained in law. Resultantly, the legal maxim ‘*sublato fundamento cadit opus*’ would come into operation, thus vitiating the subsequent actions i.e. registration of FIR / investigation.

14. Having regard to what is observed hereinabove, we are of the view that the impugned order passed by the SPCA, directing the police to register an FIR cannot be sustained in law, inasmuch as, the SPCA by giving such a direction had clearly exceeded its scope of

authority. Since, the police have registered an FIR, pursuant to the SPCA's direction, the same also cannot be sustained and as a consequence thereof, is also liable to be quashed and set aside.

15. Considering the aforesaid, the impugned order dated 29th July 2019, passed by the State Police Complaints Authority, Maharashtra State, Mumbai, in SPCA/Complaint Case No.579 of 2018, cannot be sustained for want of jurisdiction and consequently, the FIR No. 264 of 2019 registered pursuant to the said order dated 29th July 2019, with the Azad Maidan Police Station, Mumbai, also cannot be sustained.

16. In view of what is observed aforesaid, it is not necessary to go into the merits of the case.

17. Accordingly, we pass the following order:-

ORDER

i) The Petitions are allowed;

ii) The impugned order dated 29th July 2019, passed by the State Police Complaints Authority, Maharashtra State, Mumbai, in SPCA/Complaint Case No.579 of 2018, and consequently the FIR No. 264 of 2019 registered pursuant to the said order dated 29th July 2019, with the Azad Maidan Police Station, Mumbai, are quashed and set-aside;

iii) Needless to state, that it is always open for the respondent No.2 to take recourse to or adopt appropriate remedy, as permissible, in accordance with law.

iv) Rule is made absolute in the aforesaid terms. Petitions are disposed of accordingly.

18. All concerned to act on the authenticated copy of this judgment.

S. M. MODAK, J.

REVATI MOHITE DERE, J.