

Versus

The State of Maharashtra ... Respondent

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Mr. Ghanshyam Upadhyay alongwith Ms. Henna Shah for the Applicant  
in IA-1762-2021.

Ms. P.P. Shinde, APP for the State.

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CORAM : PRASANNA B. VARALE &  
N.R. BORKAR, JJ.

DATED : 29 SEPTEMBER 2022

**P.C. :-**

The learned Counsel for the Petitioner at the outset, seeks leave to amend and correct sequence of the Respondents which is incorrectly mentioned on page 2A of the Writ Petition. This being an inadvertent and typographical error, leave as sought is granted. Amendment to be carried out forthwith.

2. In the present Petition, initially following three prayers were made :

*“(a) The Hon’ble Court may kindly issue writ of mandamus and any other appropriate writ and/or direction and/or order and thereby direct the Respondent to rectify the errors in the said FIR and correctly record the names of the Petitioner, Accused and Mr. Samarth Shoor.*

*(b) The Hon’ble High Court may kindly give appropriate directions and thereby direct the Respondent to alter the sections with which the Accused is charged from Section 324 to Section 307 read with Section 34, of Indian Penal Code, 1860.*

*(c) The Hon’ble High Court may kindly give appropriate directions and thereby direct the Respondent to add the names of Mr. Sawan Bhandari and Mr. Krish Bhatija as co-accused to the said FIR, and to charge Mr. Sawan Bhandari and Mr. Krish Bhatija with offences punishable under Sections 307, 324 read with Section 34 of the Indian Penal Code.”*

3. Subsequently, with the permission of this court, the Petition is amended and the following prayers are added :

*“(28H) The Hon’ble Court may kindly issue writ of mandamus and any other appropriate writ and/or direction and/or order and thereby call upon the records of the case to ascertain what steps were taken by the Respondents, more particularly the Respondent No.6 in one year in furtherance of the investigation of the case as well as inclusion of the other 2 persons as accused.*

*(28I) This Hon'ble Court may kindly issue Writ of Mandamus and/or any other appropriate writ and/or order and/or direction in the nature of Mandamus thereby initiate enquiry against the Respondent No.6 under Bombay Police Act, 1951, for intentionally misusing the power vested by law and further take appropriate legal action for neglecting the duties and purposely attempting to sabotage the investigation of the case and persuading the Petitioner to not proceed with the same and not arresting the Accused persons.*

*(28J) This Hon'ble Court may kindly issue Writ of Mandamus and/or any other appropriate writ and/or order and/or direction in the nature of Mandamus thereby direct the Commissioner of Police, Mumbai, Respondent No.6 to take serious action against the Respondent No.6, who acted in contravention to Police duty and caused injury to these Petitioner."*

4. Perusal of the material on record shows that at the instance of the Petitioner, Crime No.4 of 2020 was registered at Santacruz Police Station against one accused Yash Lencee for commission of offence under Section 324 of the Indian Penal Code. The learned Counsel for the Petitioner submitted that the name of the accused was subsequently corrected as Yash Nencee as it was wrongly mentioned as Yash Lencee. The learned Counsel for the Petitioner further submitted that during pendency of the Petition, the investigating officer has filed the charge-sheet against accused Yash Nencee and two more accused, namely, Sawan Bhandari and Krish Bhatija. Now considering this fact, it can be safely

stated that the prayer clauses (a), (c) and (h) in the Petition do not survive.

5. In so far as prayer clauses (i) and (j) are concerned, they are in relation to alleged misconduct of the investigating officer and the alleged misconduct is mentioned in para 19B of the Petition and the material part of para 19B reads thus :

*“..... the Hon’ble Court was pleased to issue notice in the petition and keep the same on 11.01.2021. Thereafter on 09.01.2021, at 8:29pm, the Respondent No.6, without any justified cause and/or reason contacted the Advocate on Record of the Petitioner and spoke for 9 minutes wherein he attempted to persuade her to not pursue the case by repeatedly stating that the case is merely a small banter between friends and there was no substance in the same. ....”*

6. By way of an amendment, the Petitioner had placed on record Exhibit-C (page 30 of the Petition) the screen shot of the said mobile call. Though the said alleged act is certainly a serious one, in our opinion, it would not be possible for this Court to enquire into it and it would be better that if a senior police official undertakes the exercise of enquiry. Accordingly, we permit the Petitioner to submit a comprehensive representation to the Commissioner of Police, Mumbai alongwith necessary material. The said representation shall be submitted to the Commissioner of Police within a period of two weeks from today. On receipt of the representation, the Commissioner of Police may himself conduct an enquiry or entrust it to the officer not below the rank of Deputy Commissioner of Police. The

necessary action shall be taken on the representation as early as possible and not later than twelve weeks from the date of receipt of the representation.

7. Needless to state that the action taken on the representation shall be communicated to the Petitioner. In so far as prayer clause (b) is concerned, the Petitioner is at liberty to avail appropriate remedy as available under the law before the competent forum including the judicial forum. Needless to state that, if the Petitioner approaches the competent forum including judicial forum, such application shall be decided on its own merits.

8. With these observation/directions, the Petition is disposed of. As the Petition is disposed of, no order is required to be passed in the interim/intervention application and other applications. The Applications are accordingly disposed of.

( N.R. BORKAR, J. )

( PRASANNA B. VARALE, J. )

KANCHAN  
PRASHANT  
DHURI

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by KANCHAN  
PRASHANT  
DHURI  
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