

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO.622 OF 2021

PETITIONER : M/s. Rai Udyog Ltd., a Company registered under the provisions of the Companies Act, 1956, having its registered Office at “Rajat Sankul”, opposite ST Bus Stand, Ganeshpeth, Nagpur-18, through its Managing Director, Shri Kishor S/o Gopichand Rai.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through Police Station In-charge, Sadar Police Station, Tahsil & District: Nagpur.

2. The Police Commissioner, Nagpur City, Mangalwari, Nagpur.

3. The Deputy Commissioner of Police, Special Branch, Civil Lines, Nagpur.

Mr. S.P. Dharmadhikari, Senior Advocate a/b. Mr. C.S. Dharmadhikari, Advocate & Mr. R.A. Bhandakkar, Advocate for the Petitioner.

Mr. A.S. Fulzele, Addl. P.P. for Respondent Nos.1 to 3.
Mr. M.M. Akhtar, Advocate h/f. Dr. A.H. Jamal, Advocate for the Intervenors.

CORAM : **MANISH PITALE AND**
VALMIKI SA MENEZES, JJ.

DATE : **27th JULY, 2022.**

ORAL JUDGMENT (Per: Manish Pitale, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the rival parties.

02] The petitioner – Company has approached this Court challenging notice dated 28.06.2021, issued by the respondent No.1 i.e. the State through Police Officer In-charge, Sadar Police Station, Tahsil and District – Nagpur, whereby the respondent No.1, exercising power under Section 149 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), has restrained the petitioner – Company in carrying out construction on a piece of land, which according to the petitioner – Company is owned by it, until an appropriate order is obtained from the competent Court in that regard. It is recorded in the impugned notice that the aforesaid direction was given in the backdrop of a law and order situation created due to the alleged existence of a Dargah on a part of the said land.

03] When this petition was taken up for consideration,

learned counsel Mr. Akhtar holding for Mr. A.H. Jamal, learned counsel, submitted that an application for intervention bearing Criminal Application (APPW) No.24/2022, was filed in this petition on behalf of seven applicants, who claim that they have a right to be heard in the present petition.

04] We have perused the intervention application, wherein the applicants claim that the aforesaid Dargah is existing for the past about 200 years and that if the petitioner – Company is permitted to continue development/construction activity on the land in question and the Dargah is demolished, it would adversely affect devotees, who visit the Dargah for religious activities. Reference is made to certain Government Resolutions, while claiming that the applicants need to be heard in the present petition.

05] In the context of the aforesaid intervention application, Mr. S.P. Dharmadhikari, learned Senior Counsel appearing for the petitioner, invited attention of this Court to an order dated 18.04.2022, passed in Writ Petition No.2027/2022 (*Rajesh Chotelal Tambe & Others Vs. State of Maharashtra &*

Others), whereby a Division Bench of this Court considered the aforesaid writ petition, filed by the applicants herein. It was submitted that the order passed in the said petition is significant and that the same ought to be taken into consideration, while deciding as to whether the present application for intervention deserves to be considered at all.

06] A perusal of the order dated 18.04.2022, passed in Writ Petition No.2027/2022, would show that the applicants herein had approached this Court by filing the aforesaid writ petition on the Civil Side, claiming two reliefs, firstly, challenging Government Resolution dated 02.03.2019 and secondly, seeking a writ of mandamus for permission to the petitioners therein i.e. the applicants herein and other devotees for easementary rights to perform religious activities in respect of said Dargah. The Division Bench of this Court found that during the course of arguments, the petitioners accepted that no legal right of the petitioners therein was affected and that they were not agitating the issue in larger public interest and that as regards the grievance sought to be projected in the writ petition, the petitioners therein proposed

to file a civil suit for enforcement of their easementary rights. The writ petition stood disposed of by recording the afoesaid submissions advanced on behalf of the petitioners therein i.e. the applicants herein.

07] It is an admitted position that in pursuance thereof, till date, the proposed civil suit has not been filed for enforcement of the alleged easementary rights. Instead, the petitioners therein have filed the present intervention application seeking to re-agitate the same issues that were highlighted in the aforesaid writ petition. Having made a statement before the Division Bench of this Court in the aforesaid writ petition that the applicants seeking intervention herein will be filing a civil suit for enforcement of their alleged easementary rights, we are of the opinion that the intervention application does not deserve consideration. Even otherwise, the notice impugned herein is a matter between the respondent No.1 and the petitioner, with which the applicants seeking intervention have not been able to show any concern. Therefore, the intervention application i.e. Criminal Application (APPW) No.24/2022 is **dismissed**.

08] Insofar as the challenge in the present writ petition is concerned, we have perused the impugned notice dated 28.06.2021. The notice starts by recording that the petitioner has started construction activity on the land in question and that a Dargah exists on a part of the land. It is then recorded that some people had gathered at the spot, leading to a law and order situation. On this basis, the respondent No.1 issued a direction to the petitioner to obtain appropriate order from the competent Court before undertaking any further activity on the said land.

09] To understand whether such a notice could be issued under Section 149 of the Cr.P.C., it would be appropriate to refer to the said provision, which reads as follows:

“149. Police to prevent cognizable offences. - Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.”

10] A perusal of the above quoted provision, would show that a Police Officer is expected to interpose only for the purpose of preventing commission of a cognizable offence and that he can take appropriate steps in that regard. The question is, whether the

Police Officer, while exercising power under Section 149 of the Cr.P.C., can issue a restraintment order or an order akin to an injunction against a party. Reliance in this regard is placed on behalf of the petitioner on judgment and order dated 27.03.2015, passed by a Division Bench of this Court in the case of ***Shashikant Bhurya Kokani Vs. The State of Maharashtra & Ors.*** reported in ***2015(2) BomCR (Cri) 701***. While considering the scope of the aforementioned provision, in the said judgment, it was held as follows:

“11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.P.Code does not vest police officer in the exercise of jurisdiction under Section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, Respondent No.3 would not have issued impugned notice injecting the petitioner, more so when the appeals are pending adjudication. We are of the opinion that impugned notice (Annexure-F) issued by Respondent No.3 is unsustainable in law.”

11] We are of the opinion that even if there was

apprehension of a law and order situation being created at the spot in question, while exercising power under Section 149 of the Cr.C.P., the Police Officer (respondent No.1 herein) did not have the power or authority to issue a virtual injunction order against the petitioner – Company, which was undertaking construction on a piece of land. If any party sought to raise a dispute as regards the authority of the petitioner – Company to proceed with construction on the said piece of land, such a party would obviously have to knock the doors of the competent Civil Court to obtain urgent order of injunction. In fact, as noted above, the individuals who sought to intervene in the present petition, had filed Writ Petition No.2027/2022, before this Court and they had themselves proposed to file a civil suit for enforcement of the alleged easementary rights, in the backdrop of which, the writ petition stood disposed of.

12] It is significant that in Section 149 of the Cr.P.C., quoted above, the word “interpose” is used, in the context of a Police Officer preventing commission of any cognizable offence. In Cambridge Dictionary, interpose is defined by stating “to put

something between two things”. In Collins Dictionary, interpose means “to intervene or step in”. As per Marriam-Webster Dictionary, interpose means “to be or come between” and in Oxford Learner’s Dictionary, interpose means “to place somebody or something between two people or things”.

13] Applying the aforesaid meanings given to the word “interpose”, in Section 149 of the Cr.P.C., a Police Officer is required to come between people or things to prevent commission of any cognizable offence. In the present case, even if the Police Officer apprehended commission of a cognizable offence, he was required to come in between persons and while doing so, ensuring that lawful activity was assisted and unlawful activities were prevented. The petitioner – Company carrying out development activity/construction lawfully could not have been restrained merely because some people gathered with the threat of committing cognizable offence. On the contrary, the Police Officer was expected to take appropriate steps by interposing and ensuring that lawlessness and unlawful activity was prevented. Those claiming any right to restrain the petitioner – Company

from carrying out its development/construction activity ought to approach the competent Civil Court for obtaining appropriate orders of restraint, in accordance with law. Instead, the respondent No.1 – Police Officer in the present case asked the petitioner – Company to do so.

14] If the manner in which the respondent No.1 has sought to exercise power under Section 149 of the Cr.P.C. is upheld, it would lead to a situation, where development or other such activity could easily be stalled by individuals creating a law and order situation, whereupon a person or an entity seeking to undertake lawful activity, would be asked to approach the Civil Court and in the interregnum, the Police Officer would exercise power under Section 149 of the Cr.P.C. to virtually issue orders of injunction, which can never be contemplated under the aforesaid provision.

15] In view of the above, we are of the view that the impugned notice dated 28.06.2021, issued by the respondent No.1, is wholly without jurisdiction and on that ground itself, it deserves to be quashed and set aside.

16] In view of the above, the writ petition is **allowed** in terms of prayer Clause (A), which reads as follows:

“A. Quash and set aside the impugned notice dated 28.06.2021, issued by the Senior Police Station, Sadar Police Station, Nagpur, respondent no.1 herein, purportedly under Section 149 of Code of Criminal Procedure Code, 1973, it being ex-facie illegal and arbitrary; (ANNEXURE-I).”

17] Needless to say, any person aggrieved with the aforesaid situation would be at liberty to approach the competent Civil Court for appropriate relief.

18] Rule is made absolute in above terms.

(VALMIKI SA MENEZES)

(MANISH PITALE, J.)

Vijay