

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 581 OF 2023

Vishnu s/o Jajeram Gitte

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. S. P. Sonawane, Advocate holding for Mr. P. P. More, Advocate for the petitioner.

Mrs. R. P. Gour, APP for the State.

Mr. S. G. Jadhavar, Advocate for respondents No. 2 to 5.

CORAM : R. M. JOSHI, J.

DATE : 18th August, 2023.

ORDER

1. Petitioner who is the original complainant is aggrieved by order dated 21st March, 2023, passed by learned Additional Sessions Judge, Beed in Criminal Revision Application No. 15/2009 thereby confirming the dated 31st December, 2018 passed by the learned Judicial Magistrate First Class, Parali Vajinath, in RCC No. 8/2016 refusing to direct further investigation into the crime.

2. Petitioner lodged report in respect of an incident occurred on 17th December, 2014 wherein, according to him, while he was proceeding towards his house at village Chandapur, Tq. Parli at around 11.00 pm, accused persons obstructed him and abducted

him in a white car and assaulted him. There is further allegation that accused took away cash of Rs. 4,000/- and one mobile handset from his pocket. It is his further contention that since the police failed to take cognizance of the said complaint, an application came to be filed before Magistrate seeking direction under Section 156(3) of the Code of Criminal Procedure for investigation into the crime. Pursuant to the order passed by Magistrate invoking the said provision, offence came to be registered and it was investigated into. Charge-sheet was filed against the accused persons and the case was numbered as RCC No. 8/2016.

3. Petitioner filed application vide Exhibit 40 making allegations against the Investigating Officer for not conducting proper investigation of the crime and sought directions for further investigation into it. The said application was opposed by the accused persons. The learned Trial Court by passing impugned order dated 31st December, 2018, rejected the said application. This order was carried in Criminal Revision Application before the learned Additional sessions Judge, which came to be rejected. Hence, this petition.

4. Learned counsel for petitioner submits that the prayer made by complainant before the learned Magistrate was just and reasonable and ought to have been accepted by the Court. It is his contention that no purpose would be served by conducting a trial wherein the vehicle used in abduction of the informant/complainant is not seized nor the articles such as cash of Rs. 4,000/- and mobile handset snatched from him are not brought before the Court. He, therefore, submits that the Court ought to have exercised power under Section 173(8) of Code of Criminal Procedure to direct further investigation in the crime and hence, order passed by the Magistrate and confirmed by revisional Court cannot sustain.

5. Learned counsel for accused supported the impugned order by contending that there are findings recorded by the Magistrate for rejection of application and in the facts and circumstances of the case, the said findings cannot be called as perverse. In support of his submissions, he placed reliance on judgment of the Hon'ble Apex Court in the case of Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel & others, AIR 2017 SC 774.

6. Section 173(8) of Code of Criminal Procedure provides for further investigation in respect of an offence which even after report under Sub-Section 2 same is not precluded. It further states that whereupon such investigation the officer incharge of the police station obtains further evidence, oral or documentary, he is permitted to forward the same with a report/reports regarding such evidence in the form prescribed. The said provision is therefore enabling provision to the Investigating Agency to carry out further investigation even after filing of the report under Section 173(2) of the Code of Criminal Procedure.

7. In the instant case, the complainant/prosecution has sought directions to the Investigating Officer to carry out further investigation for the purpose of seizure of vehicle, cash and mobile handset. In this regard, it is material to take note of the findings recorded by the learned Magistrate while passing the impugned order. It is specifically held that the complainant in his complaint has not mentioned about the registration number of the car and that inspite of search by the Investigating Agency, the car, mobile handset and cash are not recovered. It is further observed that identification of the currency notes is not given in the First Information Report and

having regard to the fact that the period of four years had lapsed from the date of commission of offence, learned Magistrate thought it appropriate not to direct further investigation into the crime.

8. Needless to say that it is open for Investigating Agency to carry out further investigation of crime even after filing of report under Section 173(2) of Code of Criminal Procedure. In appropriate cases, it is also open for the Magistrate to direct such investigation. But, it is not mandatory that such further investigation is to be directed in each case on demand of informant. For directing further investigation and for refusing such relief, Magistrate is required to record reasons. This Court is therefore, required to consider as to whether the learned Magistrate has applied its mind to the facts of the case while passing the impugned order and recorded reasons therefor. Perusal of the said order clearly indicates that the learned Magistrate has taken into consideration the complaint made by the complainant and has also taken note of the investigation carried out in the case. On the basis of the facts and circumstances of the case, and having regard to the complaint and manner of investigation, said findings recorded by the learned Magistrate cannot be called as perverse. While entertaining writ petition, it may not be open for this

Court to substitute the said findings of fact unless it being contrary to material on record.

9. The learned Additional Sessions Judge has also taken into account the said facts and considering limited scope of interference in exercise of revisional jurisdiction under Section 397 of Code of Criminal Procedure, it was required by said Court to decide whether Magistrate has not exceeded jurisdiction or not exercised jurisdiction. Under the limited exercise of the jurisdiction under Section 397 of Code of Criminal Procedure, the order passed by the learned Magistrate is fully justified. Even otherwise, petitioner has failed to make out a case showing that investigation into the crime is not done effectively. Merely because there is no recovery, such investigation cannot be termed as bias. Thus, no case is made out for causing interference in the impugned orders. Hence, the petition is dismissed.

10. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge