

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

CRIMINAL WRIT PETITION NO.623 OF 2023

**ANTOSH RAMESH SONAVANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. S. V. Dixit, Advocate for the petitioner
Mr. G. O. Wattamwar, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 30th AUGUST, 2023

P.C. :-

1. This petition takes exception to order dated 01/10/2022 passed below Exhibits 40 and 42 filed by the petitioner who is the original informant.
2. Application (Exhibit 40) came to be filed before the Trial Court by contending that the first information report registered by the concerned Police Station is not given by him and on the contrary his statement was recorded while he was admitted in the hospital. It is stated in the said application that he has obtained the photo copy of the said statement, entry of the hospital and endorsement made by the Medical Officer of Civil Hospital, Ahmednagar. He contended that said the original documents are in the custody of ASI Ingale. A prayer was made seeking direction to ASI Ingle to place these original documents on record. Another application Exhibit 42 came to be filed with similar averments

are made in the application (Exhibit 40). In addition thereto it is stated that as per the statement made by ASI Ingale the said documents are handed over in the custody of ASI Narwade. Hence ASI Narwade was asked to produce the same on record. After hearing both sides impugned order came to be passed disposing of both applications with further direction to the informant to record his further evidence before the Court.

3. Learned counsel for the petitioner submitted that apart from the statement of the informant made in Exhibits 40 and 42, there is statement of ASI Ingale at Exhibit 58 filed before the Trial Court wherein he has admitted to have recorded statement of the informant at Civil Hospital, Ahmednagar. It is submitted that ASI Ingle claims that the said statement was handed over to ASI Narwade and hence it was just and necessary for the Trial Court to direct them to place the same on record.

4. Perusal of the record indicates that notices were issued to ASI Ingale as well as ASI Narwade. Their explanations were sought. Though ASI Ingale has accepted recording of statement but ASI Narwade candidly denied to have received any original document as claimed by the petitioner. In such circumstances there was no propriety in passing any order on Exhibits 40 and 42. The learned Trial Court has recorded the relevant facts in the order and as also taken note of the explanation given by the concerned Investigating Officers. It is pertinent to note that

in respect of the application Exhibits 40 and 42 appropriate order was passed on 26/09/2019 by the learned predecessor of the learned Court. Here is the case where existence of document is not in dispute, however the same could not be produced on record. Learned counsel for petitioner has pointed out that photocopy of the said statement is already placed on record. According to him the said statement shows the endorsement of Medical Officer. If it is so, the fact of recording of this statement could get corroboration from other record such as record of Civil Hospital or general diary entry of concerned police station etc. In such circumstances, it is for prosecution/informant to seek proof thereof by adopting appropriate provisions of Evidence Act. Mere seeking of direction to produce original statement when it's possession is denied, would not serve purpose of prosecution/informant.

5. Petitioner can not keep on insisting for issuance of same direction time and again, without adopting appropriate remedy available in law. Hence, impugned order does not deserve interference. However, said order shall not preclude petitioner/prosecution to seek proof of the fact of recording of statement of informant while admitted in hospital, in accordance with law.

6. Petition is dismissed in above terms.

(R. M. JOSHI, J.)

ssp