

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

CRIMINAL WRIT PETITION NO.1393 OF 2022

Ashik Gulam Dastagir Kureshi ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Mr. S.P. Brahme, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents No.1 and 2.
Mr. Y.H. Jadhav, Advocate for respondent No.3.
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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 1st FEBRUARY, 2023

P.C. :

This is a petition under Article 226 of the Constitution of India seeking directions against the respondents to take cognizance of complaint/ representation dated 6/10/2019 made by the petitioner and to conduct further investigation into the offence by submitting the supplementary charge sheet within a stipulated period. The petitioner has also challenged the order dated 12/8/2022, passed by the learned Additional Sessions Judge, Bhusawal in Sessions Case No.85/2021.

2. Heard learned counsel for the petitioner and learned A.P.P. for State.

3. The wife of the petitioner committed suicide on 24/4/2019. The respondent No.3 lodged the First Information Report against the petitioner and his family for subjecting the deceased to cruelty and abetting her suicide. Pursuant to the said First Information Report, C.R. No.245/2019 came to be registered at Bhusawal Bajarpeth Police Station for offences under Sections 498-A and 306 read with Section 34 of the Indian Penal Code. The petitioner was arrested in the said crime on 25/4/2019. After his release on bail he filed a complaint dated 16/10/2019 alleging that he is not involved in the crime. He named some person who was allegedly responsible for the crime and sought action against the person named in the said complaint.

4. The crime was investigated and upon completion of investigation, charge sheet came to be filed against the petitioner and the other co-accused. Subsequent to filing of the charge sheet, the petitioner filed an application under Section 156(3) of the Code of Criminal Procedure before the learned

Magistrate seeking registration of crime against person named in the complaint dated 16/10/2019. The said application came to be dismissed on 6/8/2021. The petitioner did not challenge the said order, but on 11/4/2022, he filed application under Section 173(8) of the Code of Criminal Procedure for further investigation. The said application was dismissed on 12/8/2022. The petitioner did not challenge the said order but has now filed this petition seeking directions to the respondents to register an offence pursuant to the complaint lodged by him and to conduct further investigation.

5. Learned counsel for the petitioner has relied upon the decision in case of **Devendra Nath Singh Vs. State of Bihar & ors. [2022 DGLS (SC) 1356]** to contend that the accused in a case can seek such further investigation in the crime. A perusal of the said judgment reveals that the crime was registered against a Class IV employee of the Corporation for committing offences of cheating and misappropriation, forgery etc. The said employee had filed petition under Section 482 of the Code of Criminal Procedure challenging the order of cognizance, mainly on the ground that he was made a scapegoat and that the Manager who was the real culprit was allowed to go scot free. The High Court did not interfere with

the order of taking cognizance and gave direction to the police to further investigate the case in terms of Section 173(8) of the Code of Criminal Procedure. The said order was challenged by the proposed accused as against whom direction for further investigation was issued. One of the questions raised in the said appeal was whether the High Court in the exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure was justified in issuing direction to the Magistrate to order further investigation, though the Magistrate who had taken cognizance had not adopted such process.

6. The Hon'ble Supreme Court, after considering several previous decisions culled out the following principles :-

(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation.

Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

(e) The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such

inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.”

Considering the facts of the case, the Apex Court held that the High Court was justified in ordering further investigation particularly qua the role of the appellant.

7. It is thus well settled that the High Court in exercise of inherent powers under Section 482 of the Code of Criminal Procedure can order further investigation or reinvestigation. Suffice it to say, such power cannot be exercised casually at mere asking by the accused to prove his defence but only when the Court is satisfied that the investigation is not in the right direction and facts of the case demand such recourse to do complete justice.

8. In the instant case, the wife of the petitioner had committed suicide. Pursuant to the First Information Report lodged by the mother of the deceased, Crime was registered against the petitioner and others who had allegedly abetted in commission of the suicide. The said crime has been investigated and charge sheet has been filed. The petitioner is seeking further investigation on a suspicion that the deceased

was having illicit relationship with her brother-in-law. He claims that the brother-in-law was sobbing near the dead body and there were several calls between them from 2017 till the date of suicide i.e. 24/4/2019.

9. The attempt of the petitioner appears to be to prove his innocence by pointing a finger at some other person. Having considered the material on record, in our view, the facts of the case do not demand further investigation. The conduct of the petitioner in not challenging the order dated 6/8/2021, rejecting further investigation and approaching this Court after a period of over one year appears to be an attempt to delay the trial.

10. Considering the above facts and circumstances, we are not inclined to entertain this petition. The petition is dismissed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-