

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

CRIMINAL WRIT PETITION NO. 1987 OF 2019

Ketan Dilipsingh Raghuwanshi

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. S.M. Kulkarni, Advocate for petitioner

Mrs. V.N. Patil-Jadhav, A.P.P. for respondents

....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 11th JANUARY, 2023

PER COURT :

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and inherent powers under Section 482 Code of Criminal Procedure with a principal prayer to direct the respondents to pay compensation of Rs.1 lakh for preventing him from entering the city – Nandurbar during 16th September, 2018 till 23rd September, 2018 in view of preventive order under Section 144 Cr.P.C. and further to conduct departmental enquiry against Respondent No.5 – Sub-Divisional Magistrate, Nandurbar, for passing the order under Section 144 Code of Criminal Procedure.

2. Heard learned counsel for the petitioner and learned A.P.P. for the respondents. Perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. The petitioner claims to be a social worker and a businessman. On 15th September, 2018, Respondent No.5 – Sub-Divisional Magistrate passed an order preventing the petitioner from entering vicinity of Nandurbar city from 16th September, 2018 to 23rd September, 2018. The petitioner claimed that the said order was illegal and that there was no reason for Respondent No.5 – Sub-Divisional Magistrate to prevent him from entering the Nandurbar city without even issuing a notice and without affording opportunity of hearing. The petitioner challenged the said order in Criminal Revision Application No. 20 of 2018 before the Sessions Judge, Nandurbar, which came to be allowed by order dated 21st September, 2018 and consequently the order under Section 144 Cr.P.C. was set aside.

4. Learned counsel for the petitioner claims that the order was patently illegal and has tarnished the image of the petitioner. Learned counsel for the petitioner contends that there was no urgent circumstances or apprehension, danger or nuisance to exercise power under Section 144 Cr.P.C. The order being patently bad and illegal, the petitioner is entitled for compensation. He further submits that enquiry needs to be initiated against

Respondent No.5 to send a strong signal and to curb such high handed action and illegality.

5. Section 144 Cr.P.C. confers powers on the Magistrate specified in the Section to impose certain restrictions to prevent apprehended danger of public nuisance or disturbance of public peace and tranquility. This provision empowers the Magistrate to direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray. Sub-section (2) of Section 144 Cr.P.C. empowers the Magistrate to pass such order *ex parte*.

6. In the instant case, the Respondent No.5, by order dated 15th September, 2018 passed under Section 144(2) Cr.P.C. restrained the petitioner from entering Nandurbar city from 16th September, 2018 till 23rd September, 2018. The reason for the order was registration of several crimes against the petitioner for offences including 307, 392, 395, 353 I.P.C. The petitioner challenged the order in revision application filed before the learned Sessions Judge, Nandurbar and the learned Judge set aside the order mainly on the ground that the petitioner was not named as the main accused in the said crimes and further that such proposal on the basis of registration of C.R.

No. 15 of 2015 was rejected by the very same authority. Learned Judge observed that an *ex parte* order was passed without there being subjective satisfaction about existence of emergent circumstances.

7. The petitioner seeks compensation and action against Respondent No.5 solely on the ground that the order dated 15th September, 2018 was illegal. Suffice it to say that power under Article 226 of the Constitution of India or Section 482 Cr.P.C. cannot be invoked as of right in every case when the order has been set aside by a higher court. It is only in exceptional cases when the infringement of fundamental right is gross and patent and *ex facie* glaring that compensation can be awarded in exercise of power under Article 226 of Constitution of India or Section 482 Cr.P.C. In the instant case, the only ground for seeking compensation is that the order is illegal. The petitioner has not attributed any malafides or malice to Respondent No.5. The Revisional Court has also not recorded such findings. In fact, while setting aside the order of Respondent No.5 – Sub-Divisional Magistrate, the Sessions Judge upon considering the criminal antecedents of the petitioner, has observed that it was open for the authorities to regulate the conduct of the petitioner by keeping watch on him.

8. In such circumstances the mere fact that the order has been set aside would not justify grant of compensation or action of departmental enquiry against Respondent No.5.

9. Hence, in our considered view, the criminal writ petition is devoid of merits and is accordingly dismissed.

SSD (R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)