

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.323 OF 2018

Prasad Hindurao Padalkar & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. D. S. Mhaispurkar i/by Sameer M. Mangaonkar, for the
Petitioners.

Mr. K. V. Saste, APP for the Respondent/State.

Mr. Ajit Anekar i/by Auris Legal, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 26th JUNE, 2023

P. C. (Per Nitin W. Sambre, J.)

1. The prayer of the petitioners/accused in Crime No.100 of 2016 for the offence punishable under Sections 170, 447, 323, 504, 506 r/w 34 of IPC and Sections 50 and 177 of the Motor Vehicles Act, 1988 for quashing of the charge-sheet and FIR.

2. The genesis of the offence alleged against the petitioners is, the petitioners parked their vehicle being registration No.MH-01-AH-7261, Honda City, in “No Parking” area in Building No.5, Ground Gloor, Gigaplex Estate Private Limited, Airoli, Navi Mumbai. The said vehicle was bearing a sticker of “Police”. Since the vehicle was parked in “No Parking” area, in spite of request made, same was not removed for quite a long time, the security personnel i.e.

respondent No.2/complainant applied a jammer to the same to maintain parking discipline. It took little longer time to remove the said jammer as requested by the petitioners. After lapse of certain time, all the accused/petitioners not only assaulted the respondent No.2/complainant and security team members but also abducted them using threatening language etc.

3. After the investigation, charge-sheet came to be submitted. While questioning the charge-sheet and FIR, counsel for the petitioners would urge that charge-sheet is contrary to the very scheme of Section 155 of the CrPC, as initially complaint by respondent No.2 was treated NC for an offence punishable under Sections 504 and 323 of the IPC. According to him, once the very allegations against the petitioners which are formed to be basis for registration of offence and submitting charge-sheet were formed to be basis to record non-cognizable offence, the only option left to the respondent No.2/complainant was to approach the Magistrate with a prayer for directions to investigate the offence. He would further urge that the petitioners are falsely impleaded in the offence in question. His further contentions are, even otherwise on merits of the matter, it cannot be said that the ingredients of the offence alleged are satisfied and that being so, he has sought quashing in terms of prayer clause (a).

4. Learned counsel for the petitioners so as to substantiate his contentions has drawn support from the language of Section 155

of the CrPC, which puts an embargo on the power of the Investigating Officer to investigate non-cognizable offence. According to him, said legal provision fell for consideration before the Apex Court in the matter of ***Keshav Lal Thakur Vs. State of Bihar*** reported in ***(1996) 11 SCC 557*** and the judgment of this Court in the matter of ***Vishwajit P Rane Vs. State of Goa & Ors.*** reported in ***2010 SCC OnLine Bom 1022.***

5. While countering aforesaid submissions, counsel for the respondent No.2/complainant, so also, learned APP would oppose the prayer. Counsel for the respondent No.2/complainant would urge that the registration of NC on 4th March, 2016 is purely with an intention to shield the petitioners, accused persons, they being close relatives of Senior Police Officer. According to him, investigation papers including that of contents in the FIR discloses involvement of the petitioners in a serious cognizable offence. So as to substantiate his contentions, that the police officers were not diligent in registration of offence, learned counsel has invited our attention to the award by Human Rights Commission passed on a complaint of respondent No.2, wherein directions were given to pay compensation to the respondent No.2/complainant which was implemented vide Government Resolution dated 25th June, 2019. In addition, he has also drawn support from the order of the Human Rights Commission delivered on 18th December, 2017, wherein specific observations about the default of the police officials in investigating the crime are observed.

6. The further contentions of the respondent No.2/complainant are, even if initially NC was issued, a corrective measure was taken by registering the offence and since the petitioners are already charge-sheeted, the charge-sheet can be termed as a report to the Magistrate within the meaning of Section 155 of the CrPC. As such, he has sought dismissal.

7. Learned APP submits that in the facts and circumstances of the case, this Court may pass appropriate order.

8. Having appreciated the aforesaid submissions, the admitted facts are, (a) the respondent No.2/complainant pursuant to the incident dated 2nd February, 2016 lodged a complaint on 4th March, 2016 alleging a cognizable offence; (b) the petitioners are relatives of the Senior Officer of Police is also not a disputed fact; (c) pursuant to the complaint above, an NC was registered on 4th March, 2016 for an offence punishable under Sections 504 and 323 of the IPC; (d) pursuant to the complaint lodged by the respondent No.2/complainant, the Human Rights Commission vide its order dated 18th December, 2017 made following observations :-

“On perusal of the entire records made available it is seen that no doubt on 04.03.2016 (wrongly mentioned as 04.03.2020) an NC case has been registered against the said Prasad Padalkar and two unknown others. It is also stated in the report that so far as the complainant is concerned on 19.03.2016 on the basis of a complaint by Prasad Padalkar a crime in 106/2016 has also been registered on 19.03.2016. It is stated that since after

investigation as there was no material found, the case against the present complainant has been put up in 'C' summary which has been accepted by the Court and so far as the case filed by the complainant is concerned same is investigated and charge sheet is filed.

On the face of the records no doubt an attempt has been made to show that proper and immediate action has been taken by the concerned Police but on thorough examination it appear to be a clear case of apathy and possibly partisan attitude on the part of the concerned Police Officials. At the outset it is to be noted that if really an NC case was registered on 04.03.2016, there was no need for further action like registering another case. It is to be noted that the contents of the complaint prima facie show that it was a case of cognizable offences and in fact the Police had got examined the complainant medically and as such as required u/s. 154 immediate registration of proper case with proper offences was mandatory. Instead of the same the Police have kept quiet for almost 15 days and only after the complainant approached higher officials as well as filed an RTI application it appear that the concerned Police have awoken and registered a case only on 17.03.2016. The attempt to dilute the grievances of the complainant in collusion with said Prasad Padalkar is also clear as thereafter on 19.03.2016 the Police have got a complaint filed through him against the present complainant and which is now closed by filing 'C' Summary report."

9. As such, what can be noticed by this Court is, in the complaint by respondent No.2/complainant though a cognizable offence was disclosed, intentionally the respondent/police authorities have registered a non-cognizable case so as to shield the accused persons. The said act of police officials can be inferred from the order of the Human Rights Commission dated 18th December,

2017 which we are informed to have attained finality.

10. Apart from above, it appears that a corrective measure was taken by the police authorities thereby recording a complaint of the respondent No.2/complainant on 17th March, 2016 which led to the registration of the offence. The offence was thoroughly investigated into. CCTV footages and statements of eye witnesses sufficiently infer involvement of the petitioners not only in a serious cognizable offence but also from the evidence available on record, it can be inferred that the petitioners are *prima-facie* involved in the offence in question.

11. As such, on merit, it has to be held that there is enough material available against the petitioners to infer their *prima-facie* involvement in the offence in question. The evidence available on record of course is subject to scrutiny during the trial, however, for the purpose of deciding the present petition, it has to be held that on merit, there is enough material to *prima-facie* infer the involvement of the petitioners in a serious offence. The contents of complaint and evidence collected during investigation satisfies the ingredients of the offence alleged against the petitioners.

12. As far as contentions *qua* the provisions of Section 155 of the CrPC and investigation being carried out against the petitioners without authority of law is concerned, we have already observed that the complaint discloses a serious cognizable offence.

After the offence was registered, the petitioners were charge-sheeted. Once the petitioners are charge-sheeted, though non-cognizable case based on the very same allegations was noted earlier, charge-sheet always can be treated as a report to the Magistrate under Section 155 of the CrPC.

13. In the aforesaid background and having regard to the facts of the case in hand, the petitioners cannot draw support from the judgment of Apex Court in the matter of *Keshav Lal Thakur (cited supra)*, so also, judgment of this Court in the matter of *Vishwajit P. Rane (cited supra)*.

14. Apart from above, the order of the Human Rights Commission and the very conduct of the petitioners of displaying sticker of “Police” on their private vehicle, highhanded conduct of impersonating to be a police officer and abducting and assaulting private security personnel warrants that they should be made to face a trial in view of availability of strong evidence.

15. In this background, no case for causing interference is made out.

16. The petition as such stands dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]