



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 519 OF 2019

M/s. R.B.K. Realtors Pvt.Ltd. ...Petitioner
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Jitendra B. Mishra a/w Ashutosh Mishra, for the Petitioner.

Ms. S.S.Kaushik, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 17th AUGUST, 2023

P.C. :

1. By this petition, the petitioner seeks quashing and setting aside the impugned order dated 10th October, 2018 (Exhibit – I to the petition) passed by the respondent No.2 – Deputy Commissioner of Police, Zone III, Worli, Mumbai, essentially on the ground, that the complaint filed by the petitioner has not been looked into by the respondent No.2, in particular, the allegations made in para 11 of the

said complaint dated 28th December, 2015, which is at 'Exhibit – A' to the petition.

2. Perused the papers. The petitioner had earlier filed a writ petition being Criminal Writ Petition No. 2407 of 2018 making certain grievances as against PSI – Amit R. Pawar and Senior Police Inspector – S.L.Biranje, Worli Police Station, Mumbai. Vide order dated 11th July, 2018, this Court (Coram: R.M.Savant & Revati Mohite Dere, JJ.) has passed the following order.

“1. The Petitioner was before the State Police Complaints Authority, Mumbai, in respect of his grievance against PSI - Amit R. Pawar and Senior Police Inspector, Worli Police Station – S.L.Biranje, alleging harassment by the said Police Officers. The complaint was proceeded before the State Police Complaints Authority. However could not culminate any final order being passed by the State Police Complaints Authority, in view of the legal position that insofar as the officers of the rank of P.I and below the complaints could only be heard by the Divisional Police Complaints Authority. Hence, the State Police Complaints Authority had stayed the hearing, pending the clarification from the State Government.

2. The Petitioner was therefore constraint to file the above Writ Petition seeking a direction that the State Police Complaints Authority be directed to dispose of his complaint. We had requested the learned Advocate

General Mr.Kumbhakoni to assist us in the situation arising out of the impasse which was created on account of the State Police Complaints Authority not proceeding with the hearing though it had done so earlier. The learned Advocate General exposted the legal position as indicated in the Maharashtra Police Act and especially in Sections 22Q and 22S of the said Act under which the State Police Complaints Authority and Divisional Police Complaints Authority, are established. The learned Advocate General would submit that the distribution of work between the two Authorities is by a hierarchical division, the complaints insofar as the officers of the rank of PI and below are to be heard by the Divisional Police Complaints Authority and the State Police Complaints Authority is coram non judice insofar as, the said Officers are concerned.

3. The learned Advocate General has thereafter brought to our notice the various steps which are being taken to establish the Divisional Police Complaints Authority at the various districts. He states that insofar as the complaints relating to Mumbai are concerned, the Divisional Police Complaints Authority would be one which is established for the Konkan area which would include Mumbai and Mumbai Suburban District. He states that the place for the same has been identified, however, the final negotiations are in progress and accepts that the place would be finalized in a short time.

4. Be that as it may, having regard to the aforesaid situation, we enquired from the learned counsel for the Petitioner, as to whether the Petitioner is agreeable to wait till such time as the Divisional Police Complaints Authority for the Konkan area becomes functional. Upon this the learned counsel Mr.Mishra, on instructions of the representative of the Petitioner Mr.Abdul Bashir Khan,

Director of the Petitioner, who is personally present in Court states that the Petitioner would be satisfied if his grievance is looked into by the Deputy Commissioner of Police, Zone – III, Mumbai. Upon this, the learned Advocate General, on instructions states that the Deputy Commissioner of Police, Zone – III, Mumbai, would look into the grievance of the Petitioner as contained in the complaint dated 28th December, 2015, Exhibit – A to the above Petition.

5. The Petitioner to furnish the necessary papers to the Office of the Deputy Commissioner of Police, Zone – III, Mumbai, along with a copy of the instant order, within one week from date. On receipt of such papers, the Deputy Commissioner of Police, Zone – III, Mumbai, would decide upon the complaint of the Petitioner, within four weeks thereafter and communicate such decision to the Petitioner.

6. With the observations as aforesaid, the above Writ Petition is disposed of.”

3. Pursuant thereto, the Deputy Commissioner of Police, Zone III, Mumbai, decided the petitioner’s complaint dated 28th December, 2015, essentially, on the premise, that chargesheet has been filed and as such, there is no merit in the allegations made by the petitioner in his complaint.

4. The specific grievance of the petitioner is that the

respondent No.2 i.e. Deputy Commissioner of Police, Zone III, Mumbai had not gone into the merits of the complaint dated 28th December, 2015 and had decided the said complaint only on the ground that chargesheet has been filed in the said case and had not considered the allegations made by the petitioner in the complaint and in particular in para 11 of the said complaint.

5. Learned APP does not dispute the fact that there is no mention in the order dated 10th October, 2018 with respect to the allegations made by the petitioner in para 11 of the said complaint dated 28th December, 2015.

6. Considering the aforesaid, without going into the merits of the allegations made by the petitioner in his complaint dated 28th December, 2015, we quash and set aside the said order dated 10th October, 2018.

7. Learned APP states that an authority has now been

constituted i.e. Division Level Police Complaints Authority, Mumbai, and that the same is functional and as such, the complaint of the petitioner dated 28th December, 2015 can be considered by the said Division Level Police Complaints Authority, Mumbai. Learned Counsel for the petitioner has no objection to the same.

8. Accordingly, we request the Division Level Police Complaints Authority, Konkan area, to decide the petitioner's complaint dated 28th December, 2015, expeditiously, and in any event, within three months from the date of receipt of this order.

9. We make it clear, that we have not gone into the merits of the said complaint dated 28th December, 2015 and as such, the said complaint be decided on its own merits, uninfluenced by the decision taken by the Deputy Commissioner of Police, Zone III, Mumbai dated 10th October, 2018.

10. All contentions of all parties are kept open.

11. The petitioner to place a copy of this order before the Division Level Police Complaints Authority, after which, the Police to transfer the file pertaining to the said complaint to the said authority.

12. Petition is accordingly disposed of on the aforesaid terms.

13. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.