

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

CR. WRIT PETITION NO. 84 OF 2023

Mahadev Prabhu Mhaske

....PETITIONER

V/S

State Of Maharashtra & Anr.

....RESPONDENTS

Mr. Tejas Hilage for the Petitioner.

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

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ**

DATED : 07th JUNE, 2023.

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

1. Heard the respective Counsels.
2. The prayer in the Petition is for quashing of the FIR in Crime No. 481 of 2022 for the offence punishable u/s 353, 323, 332, 504, 506 r/w. 34 of the IPC registered on 09/10/2022 and the consequential charge-sheet.
3. The case of the prosecution against the Petitioner is that an informant-police constable by the name - Dayanand Shivaji Kadam, who was on patrolling duty, intercepted the wife and the son of the Petitioner at about 00.30 am on 09/10/2022 in the Yerwada jail premises. It is the case of the prosecution that the son and wife of the Petitioner answered all the queries, however, the said duo having

got infuriated because of the constant questioning allegedly slapped and used abusive language against the Respondent No. 2/Complainant. As a sequel of above, on 09/10/2022 at about 8.00 am a complaint came to be lodged resulting into registration of the aforesaid crime.

4. It is the case of the Petitioner that he is a public servant working in the Yerwada Jail, Pune and was occupying the quarter in the jail premises. According to the Petitioner, he being a public servant is sensitive to his duties and but for the present there are no antecedents against him either on or off the duty. The Petitioner claims that he is falsely implicated in the aforesaid crime as could be inferred from the contents of the FIR. Apart from the above, the contentions of learned Counsel for the Petitioner are, the differences between his son and the police constable from the Respondent-Police Station have given rise to the aforesaid false implication.

5. So as to substantiate the aforesaid contentions, Mr. Hilage, learned Counsel appearing for the Petitioner would invite our attention to the language employed in the FIR, the delay in the registration of crime and the statements of the witnesses, who are police personnel. According to him, in a calculated manner the Respondent No. 2 has falsely implicated the Petitioner in the offence

in question.

6. While countering the aforesaid submissions learned APP, Mr. Saste would urge that the FIR discloses a cognizable offence. That being so, after the registration of crime, the same was investigated and as sufficient evidence was noticed to charge-sheet the Petitioner, the Petitioner came to be charge-sheeted. He would urge that this Court cannot appreciate the truthfulness of the story of the prosecution at this stage.

7. We have appreciated the rival claims. We have also perused the contents in the FIR and other statements.

8. The case of the prosecution rests on the FIR and the incident that had taken place on the intervening nights of 8th and 9th October, 2022. The Respondent No. 2/Complainant-Police Constable is claiming that he along with Sakat, other Police Constable was patrolling within the Yerwada Jail premises and had noticed the presence of the lady, who was occupying the bench and a boy, who was sitting on the stationery bullet vehicle. As they noticed the presence of these two people to be suspicious, the Respondent No. 2 questioned the presence of these two persons in response to which it was informed to them by the Respondent No. 2/Complainant that they cannot sit in the said premises at such late hours and directed

them to move from the said place to their own premises.

9. It is claimed that the aforesaid suggestion of the Respondent No. 2/Complainant were taken adversely by the son of the Petitioner stating that on an earlier occasion also the said police constable had taken him to the police station and as such, he started using abusive language which was supported by his mother. It is claimed that thereafter the Petitioner was called by the aforesaid two persons i.e. his wife and son at which point of time the wife of the Petitioner was abusing the police personnel. It is further mentioned that the Petitioner gave a push to the police constable, which resulted in fall of walkie-talkie instrument and all three accused persons started using abusive language against Respondent No. 2/Complainant. It is further claimed that the woman assaulted the Respondent/Complainant as a sequel of which the police personnel called for the assistance from the control room.

10. As a sequel of above, the offence was registered and the investigation was set in motion. During the investigation the statements of police personnel, Dayanand Kadam viz. Respondent No. 2/Complainant, Sanjay Sakat, Swapnali Gaikwad, Sujata Gaikwad, Shamlata Devkar and Sanjay Jaybhave came to be recorded u/s. 161 of Cr.P.C. Though the incident had taken place at about 00.30 hours

on 09/10/2023, a complaint came to be lodged at 8.00 am in the morning by the police personnel i.e. Respondent No. 2/Complainant after unexplained delay of about eight hours. The complainant and witnesses who are police personnel can not be said to be unaware of about statutory and legal procedure viz. of lodging FIR forthwith and effect of delayed registration of FIR with its legal consequences.

11. Apart from the above, there is a reference to the son of the Petitioner in a complaint stating that the Police Constable, Mr. Sakat having Buckle No. 8267 had earlier taken the Petitioner's son to the Respondent - Police Station. The fact remains that in the investigation of the present crime the said issue of police constable Mr. Sakat taking the co-accused i.e. son of the Petitioner to the Police Station is neither explained in the complaint nor in the statement of any of the witnesses.

12. It appears that NC complaint u/s. 155 of Cr.P.C. came to be registered as NCR No. 2132 of 2022 on 15/05/2022 on a complaint lodged by Nilesh Vinayak Gurav against the Petitioner and his son. The aforesaid NC report which is found to be a part of the charge-sheet specifically depicts that on an earlier occasion there were differences between the Petitioner and his son on one side and police personnel of the Respondent-Police Station on the other side.

In the investigation of the said NC there appears to be involvement of the police constable, Sakat in taking the son of the Petitioner to the Respondent-Police Station. In this background pre-existence of differences between the police personnel of the non-applicant-police station and the son of the Petitioner can be said to have given rise to the false implication of the Petitioner in the offence in question.

For forming the aforesaid opinion of victimization and false implication this Court is also required to be sensitive to the fact that the Respondent No. 2/Complainant was aware about the status of the Petitioner being an employee of the jail as is referred to in the FIR. Apart from the above, the son and wife of the Petitioner if sitting in the very premises of their quarter, even at late hours i.e. 12.00 o'clock cannot be said to have committed an offence particularly when all the accused are undisputedly occupying the quarter in the vicinity of the jail premises. The fact that the accused persons are residing in the jail premises is apparent from the language used in the FIR of the police constable Sakat knowing that the Petitioner is an employee of the jail. The FIR further contains vague, general and non-specific attributions of uttering threatening language against public servants. The FIR does not contain specific attributions against each of the accused persons of uttering threatening words but it is

claimed that in chorus the Petitioner has uttered such words. Such allegations in our opinion cannot constitute an offence punishable u/s. 353, 504, 506 r/w. 34 of IPC.

13. The perusal of the investigation papers depicts that the alleged incident had taken place on the intervening nights of 8th & 9th October, 2022 at around 00.30 hours, for which the complaint was lodged by the police personnel at 8.30 am without explaining the delay.

14. So as to bring home the guilt of the accused persons, the investigating officer, Mr. Ashok Kate, PSI recorded the statement of Sakat, police constable on 17/10/2022 when in fact he being claimed to be one of the eye witness to the incident. In the statement of said eye witness, it is not explained as to why the same was recorded after a period of almost 8 days. Similarly, the statements of other witnesses i.e. Swapnali Gaikwad-WPSI, Sujata Gaikwad-Woman Police Constable, Shamlata Devkar-Woman Police Naik, Sandeep Jaybhaye, Police Constable are recorded on 18/10/2022. All these statements are recorded after a period of almost 9 days, when in fact all these witnesses are police personnel who day in and day out are in the police station for discharging their duties. A supplementary statement of Swapnali Gaikwad, WPSI was recorded on 02/12/2022.

15. There appears to be a complaint preferred by the wife of the Petitioner to various authorities such as the National Women Commission and the State Women Commission, alleging victimization and police atrocities. The said complaints appear to be preferred on 15th/16th November, 2022. It is only after a complaint was preferred by the wife of the Petitioner to various authorities, the investigating agency appears to have recorded the statements of witnesses - police official, who could be termed as interested witnesses. The above efforts on the part of Investigating Officer can also be viewed as an attempt to investigate an offence that to a belated stage so as to create evidence to overcome the said complaint.

16. Section 161 of the Cr.P.C provides for the examination of the witnesses by the police. Such statements are used for the purpose of impeaching the credibility of the witnesses. While recording the said statement u/s. 161 of Cr.P.C it is the duty of the investigating officer to find out the probability and truthfulness of the complaint as the investigation includes the examination of the witness, confronting the witness on the basis of incriminating material collected during such investigation. As such, it is expected of the investigating officer to be prompt in the interrogation of the witnesses during

investigation so as to eliminate the possibility of a doctored or biased version to be given.

17. As observed hereinabove, the statement of the witnesses is used for the purpose of impeaching the credibility of the witnesses sufficiently speaks about approach of the investigating officer to be unbiased, neutral and prompt in the investigation. Prejudice caused to the accused in recording the belated statement of witnesses without offering a reasonable explanation for such an act can prompt the Court to consider the said issue in favour of the accused person. As such, it is the duty of the investigating officer to record the statement of the eye witnesses about the occurrence at the earliest opportunity after registration of the offence. The belated recording of the statement diminishes and raises doubt of presence of the witnesses at the scene of the occurrence.

18. That being so, the Apex Court in the matter of ***Ranbir & Ors vs. State of Punjab*** reported in ***AIR (1973) SC 1409*** has observed that the Criminal Court attaches great importance to prompt interrogation of the witnesses u/s 161 of the Cr.P.C.

19. The criminal law also identifies the concept of 'got up witness'. This Court had an occasion to explain the aforesaid concept in the matter of ***Gopal Anjappa Falmari vs. State of Maharashtra***

reported in **1995 (1) Bom.CR 116**. This Court has held that got up witness is a witness, who was not interrogated u/s 161 of the Cr.P.C on the date of the incident but on the subsequent date was got up. On the other hand, early recording of the statement of witness gives credibility to the evidence of such witness as prompt interrogation eliminates the chance of a manipulated account being brought through by such a got up witness.

20. The Apex Court in the matter of **State of Himachal Pradesh vs. Gian Chand** reported in **AIR 2001 SC 2075** and **Dilawar Singh vs. State of Delhi** reported in **AIR 2007 SC 3234** has observed thus:

"If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding entire prosecution case."

"In criminal trial, one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even made fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is a delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the

prosecution case."

21. If we consider the aforesaid law laid down by the Apex Court *qua* the effect of delay in recording the statement of the witnesses particularly when the witnesses are police officials from the very same police station, it cannot be ruled out that there is every possibility of embellishment in the prosecution version. The Court is also required to be sensitive to the principle that delay defeats the chance of unsoiled and untarnished version of the case presented before the Court at the earliest instance.

22. In the matter of ***Ganesh Bhavan Patel vs. State of Maharashtra*** reported in ***(1978) 4 SCC 371*** the Apex Court has held that delay in recording the statement of prosecution witnesses u/s. 161 of Cr.P.C. inspite of such witnesses being available for examination when the investigating officer has visited the scene of occurrence or soon thereafter would cast a doubt on the prosecution case.

23. If we appreciate the aforesaid legal propositions in the facts of the present case, the fact remains that the incident had occurred on the night of 09/10/2022 whereas the statements of the witnesses, who are police officials were recorded at a much belated stage i.e. almost after 8 days in spite of the fact that all the police officers are

available to the investigating officer. If the said fact is appreciated in the backdrop of the complaint being lodged by the Petitioner's wife at the National and State Women Commission, the earlier NC being registered against the Petitioner and his son on the complaint of the police personnel from the very same police station to which one of the eye witnesses in the present case, Mr. Sakat is shown to be the party too and the fact that there is a delay of almost 8 hours in lodging the FIR sufficiently prompts this Court to cast a doubt on the prosecution case.

24. Apart from the above, the fact remains that if we appreciate the ingredients of offence alleged against the Petitioner to be punishable u/s. 353 of the IPC viz. assault or criminal force to deter a public servant from discharge of his duty the allegations against the Petitioner, who himself is a public servant is that of abusing the Respondent No. 2/Complainant, a public servant and giving push to the Respondent No. 2/Complainant.

25. The fact remains that the Petitioner was not present at the place of occurrence of the offence since beginning. He was called by the co-accused i.e. his wife. That being so, it cannot be said that the Petitioner had common intention to attract the provision of Section 34 of the IPC of committing offence in question. The attributions

against the Petitioner in our opinion do not satisfy the ingredients of Section 353 of IPC particularly when there is absence of assault or criminal force.

26. While dealing with prayer for quashing, the Apex Court has observed that in exercise of powers under Section 482 of Cr.P.C., the Court is required to consider as to whether or not allegations in the complaint disclose commission of cognizable offence. In the matter of ***State of Andhra Pradesh vs. Golconda Linga Swamy & Anr.***, reported in ***(2004) 6 SCC 522***, it has been held that authority of the Court exists for advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. As such, it would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In case if Court noticed that continuance of criminal proceedings amounts to abuse of process of the Court or quashing otherwise sub-serves ends of justice when no offence is disclosed, the Court can examine the question of fact. Power of quashing can even be exercised in case if evidence adduced is clearly inconsistent with the attributions made or no legal evidence has been presented as is endorsed in the judgment of the Apex Court in the matter of ***R.P. Kapur vs. State of Punjab***

reported in **(1960) 3 SCR 388**. In case, delay in lodging FIR is not reasonably explained, adverse inference can be drawn, provided Court is required to minutely examine prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime. The Apex Court has further held that insisting upon the accused to seek explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay. In support of the aforesaid observations, reliance can be placed on the judgment of the Apex Court in the matter of **Bijoy Singh & Anr. vs. State of Bihar** reported in **(2002) 9 SCC 147**.

27. Apart from above, we have already discussed hereinabove the circumstances which led to forming an opinion of likelihood of false implication of the Petitioner in the offence in question.

28. The fact remains that this Court confronted the Investigating Officer on the issue of delayed recording of the statement of witnesses and also non-production of the transcript of the DVD. There is no plausible explanation coming forth from the Investigating Officer for the same.

29. Apart from the above, the offence u/s. 323 i.e. voluntary causing hurt to deter a public servant to perform his duty cannot be inferred against the Petitioner for want of satisfaction of necessary

ingredients.

30. In this background, we are of the view that the prosecution against the Petitioner for the offence alleged against him cannot be said to be sustainable particularly for want of criminal intimidation and the absence of criminal force to deter public servant.

31. That being so, the Petition stands allowed in terms of prayer clause (a) to the extent of the Petitioner only.

(SHARMILA U. DESHMUKH, J)

(NITIN W. SAMBRE, J.)