

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.112 OF 2022

PETITIONER : Rita d/o Yamunaprasad Upadhyay @
Rita W/o Alok Mhaiskar
Aged about 38 years, Occ-Household,
R/o Plot No.908, Deshpande Layout,
Wardhaman Nagar, District Nagpur

..VERSUS..

RESPONDENTS : 1 The State of Maharashtra,
Through the Police Station Officer
Borakhedi Police Station, Taluka
Motala, District Buldhana.

2 The State of Maharashtra,
Through The Superintendent of
Police, Buldhana Police, Having its
office at Chaitanyawadi, Dist.
Buldhana.

3 The State of Maharashtra,
Through Special Inspector General of
Police, Amravati Range, Amravati.

4 Union of India,
through its Chief Secretary, Ministry of
Home Affairs North Block, New
Delhi.

Ms S. Sahasrabuddhe a/w Eshan Sahasrabuddhe, Adv. h/f Mr R. K. Tiwari, Advocate for the
Petitioner.

Mr S. S. Doifode, Addl. P. P. for the Respondent Nos.1 to 3.

Ms M. R. Chandurkar, Advocate for the Respondent No.4.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 23rd FEBRUARY, 2023.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. The Petitioner lady has certain grievances, for which she has repeatedly lodged Police reports, however, cognizance was not taken. Therefore, Petitioner has applied under Article 226 of the Constitution of India seeking directions to transfer the investigation to the CBI. Particularly, it has been stated that one of the culprit is sitting MLA of Ruling Party that is why the Police are not taking any action. The learned Additional Public Prosecutor brought to our notice that the complaint/application of the Petitioner was considered by the Police and after inquiring, they found that there is no substances, it has been closed.

3. It appears that without registration of offence, the Police have carried preliminary inquiry and concluded that

no offence has been made out. As a matter of fact, in view of the decision of Hon'ble Supreme Court in case of *Lalita Kumari ..V/s.. Government of Uttar Pradesh and Others*, reported in *(2014) 2 SCC 1*, it is mandate on Police to register offence excepts the cases falling under the categories mentioned in Para 120.6 of the decision. It has not been made clear to us as to in which category the grievance falls so as to carry preliminary inquiry without registration of FIR. The fact remains that the Petitioner has filed three successive complaints to the Police Authorities dated 12.08.2021, 24.10.2021 and 26.10.2021, however, no cognizance was taken.

4. In the circumstances, Petitioner ought to have applied to the jurisdictional Magistrate with an application seeking direction to investigate in terms of Section 156(3) of the Code of Criminal Procedure. Obviously, the Magistrate has to consider whether a cognizable offence has been made out, and if so, the directions can be issued. The Magistrate can also monitor whether his directions have been followed or not. Even if, the Magistrate comes to a conclusion that the

Police did not register offence, he can take cognizance and proceed further in accordance with law. All these factual aspects have to be gone into by the concerned Magistrate. Since no offence has been registered, we see no reason to direct to transfer the investigation.

5. The Petitioner's learned counsel has placed one another difficulty before us that the subject property situates within the territorial jurisdiction of the Judicial Magistrate First Class, Motala, District Buldhana. The Petitioner is permanent resident of Nagpur and since there is involvement of local MLA, she is under threat, and therefore, she could not go to said place to file complaint. It is submitted that Petitioner has applied to the concerned Police for providing protection, however, they are not doing so.

6. In view of the matter, the Petitioner is at liberty to initiate necessary proceeding before concerned Magistrate, who shall deal it in accordance with law. We direct the Superintendent of Police, Buldhana, to provide necessary protection to the Petitioner in accordance with Rules, if she

applies so. The Police shall extend every help to the Petitioner since the allegations are against a waity person i.e. sitting MLA.

7. In view of above, the petition stands disposed.
Rule accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE