



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

CRIMINAL WRIT PETITION NO. 460/2023

Lekeshwar s/o Bharatlal Bhaktivarti,
Aged about 35 year, Occ. Driver,
R/o. Birsi (Amgaon), Tah. Amgaon,
Dist. Gondia.

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary, Department of
Home, Mantralaya, Mumbai – 400 032.
2. The Superintendent of Police,
Gondia, Tahsil & Dist. Gondia.
3. Police Station Officer,
Police Station, Amgaon,
Tah. Amgaon, Dist. Gondia.
4. Shashikant s/o Sambhajirao Dhapate,
Aged about 50 years, Occ. Additional Chief
Judicial Magistrate, Gondia, R/o. Judicial
Officers' Vasahat, Amgaon, Tah. Amgaon,
Dist. Gondia.

Mr. D.L. Dharmadhikari, Advocate for petitioner.
Mr. S.M. Ghodeswar, Addl. Public Prosecutor for respondent Nos. 1 to 3.
Mr. A.A. Dhawas, Advocate for respondent No.4

CORAM : **NITIN W. SAMBRE AND**
VALMIKI SA MENEZES JJ.

DATE : **15.09.2023**

JUDGMENT (PER NITIN W. SAMBRE, J.)

This petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure ('Code'). The petitioner is arrayed as an accused in Crime No. 150/2023 registered on 11.05.2023 with respondent No.3 Police Station Amgaon, Tahsil Amgaon, District Gondia. The petitioner is seeking to quash First Information Report ('FIR') with further prayer to transfer the investigation in question in pursuance of incident dated 11.05.2023 to high power committee such as State CID or Crime Branch of India ('CBI').

2. The facts necessary for deciding the petition are as under:-

It is the case of prosecution that on 11.05.2023, the petitioner was riding Hero Passion Pro two wheeler motorcycle bearing Registration No. CG-04/KW-8871 along with his minor son and wife. While proceeding from Gondia to Rizama, he was to travel in the direction of Gondia on Amgaon Road and take right turn from the said Highway to Rizama. When he reached at Awanti square, from where he was to take right turn from the aforesaid Highway, it is claimed that he stopped his bike, as from other side of the Highway which was having cement divider, a four wheeler was noticed coming from Amgaon to Gondia side. It is claimed that said

vehicle was driven by the respondent No.4 in rash and negligent manner which gave dash to his bike, then gave dash to pedestrian who expired and dashed against iron railing.

3. In this background, the aforesaid prayers are sought to be pressed.

4. The counsel for the petitioner submits that complaint came to be lodged by the respondent No. 4, who is working as an Additional Chief Judicial Magistrate at Gonida. According to him, the entire mistake was that of respondent No.4 complainant. Since the petitioner suffered injury, he was taken to hospital. Taking advantage of the situation, respondent No. 4 lodged the complaint against the petitioner, resulting into registration of false offence against him vide Crime No. 150/2023 dated 11.05.2023 punishable under Sections 279, 337, 427 of the Indian Penal Code read with Section 184 of the Motor Vehicles Act. Mr. Dharmadhikari, learned counsel appearing for the petitioner submits that since the respondent No. 4 is a Judicial Officer holding the post of Additional Chief Judicial Magistrate, he has influenced the investigation and prevailed upon the Police Authority to register false offence against the petitioner though the petitioner is not at fault.

5. It is further claimed that in the investigation neither the statement of eye-witnesses are recorded, nor recovery of CCTV

Footages is effected by the Police Authority. As such, he would urge that the intention of the Investigation Agency is to absolve the respondent No. 4 and charge-sheet the petitioner in false offence. Mr. Dharmadhikari, learned counsel would urge that considering the position held by the respondent No.4 and he being highly influential Judicial Officer, the investigation needs to be transferred to the State CID or the Central Bureau of Investigation. So as to substantiate his contention, he has invited our attention to the contents of FIR, the complaint lodged by the petitioner to the various higher authorities, such as Chief Justice of India, the affidavit sworn by alleged eye-witness Chayandra Kumar Digambar Patle, dated 13.05.2023, the complaint dated 14.05.2023 lodged by Dewanganabai mother of deceased Prashik, the photographs of the four wheeler and two wheeler so also, the victim of the offence. As such Mr. Dharmadhikari would urge that not only the registration of offence against the petitioner is liable to be quashed and set aside, but also the investigation is required to be transferred to CBI or State CID having regard to the involvement of respondent No.4 Judicial Officer in serious offence.

6. Mr. Ghodeswar, learned APP appearing for respondent Nos. 1 to 3 has placed on record the report of the Investigating Officer, i.e. Additional Superintendent of Police, Gondia Camp,

Deori. According to him, the investigation has advanced and the respondent No. 4, Judicial Officer is also impleaded as an accused. He would try to demonstrate from the investigation paper that not only the statement of eye-witnesses are recorded, but also CCTV Footages were recovered and seized in the matter. According to him, if the petitioner intends to produce any of the witnesses, the Investigating Officer shall consider the same in aid of the investigation. As such, he would urge that the Court may pass an appropriate order in the matter.

7. Respondent No.4 submits that this Court may peruse the original investigation papers. According to him, the accident has occurred because of rash and negligent riding of motorcycle by the petitioner, as the petitioner while crossing the highway was not diligent and suddenly took turn. According him, so as to save the petitioner and his family, the respondent No.4 tried to take left turn as the vehicle of the petitioner came from right side of the car and as such, his vehicle got dash with the iron bars of the railing. While saving life of petitioner and his family, a pedestal got dashed by the vehicle and the accident as such, could be inferred because of rash and negligent driving of the petitioner. He would further urge that the respondent No.4 has cooperated in the investigation and shall follow the legal procedure. It is also claimed that respondent No.4

never tried to influence the investigation nor he has interfered in any way directly or indirectly in the investigation.

8. This Court on 18.07.2023, after considering the case of the petitioner noted that the investigation needs to be carried in lawful way and directed to produce of investigation paper on the next day including that of Marg inquiry papers, CCTV Footages.

9. On 01.08.2023, when the matter was listed before this Court, this Court directed that investigation to be conducted by the Superior officer so as to avoid possibility of bias investigation and accordingly directed the investigation to be transferred and conducted by the officer not below the rank of Additional Superintend of Police, Gondia. It was also directed to collect the CCTV Footages and accordingly the matter was adjourned to 17.08.2023.

10. On 17.08.2023, this Court perused progress in the investigation, as reflected in the report submitted by Investigation Officer.

11. Thereafter, on 13.09.2023, when the matter was listed, the second progress report was produced.

12. We have carefully perused the investigation papers, case diary, and the progress report of the investigation referred herein above. This Court expressed its satisfaction as to the investigation carried out by the Additional Superintend of Police and further noticed that the investigation should be completed expeditiously.

13. The petitioner thereafter, sought an adjournment to take instruction as to whether he would like to withdraw the petition or invite an order from this Court as respondent No.4 is also arrayed as an accused in the aforesaid offence. Accordingly, the matter was posted on 15.09.2023 and the learned counsel for the petitioner argued the matter at length.

14. We have perused the entire investigation papers including that of the spot panchanama dated 11.05.2023, the medical papers of all the affected parties, the statement of the witnesses which were recorded immediately after occurrence of the accident, the statement of eye-witnesses recorded under Section 161 of the Code, so also under Section 164 of the Code, the photographs of the vehicles, the location of the vehicles and recovery of CCTV Footages.

15. The Division Bench of this Court in the matter of **Ollala Kamlakar Lachaih and another Vs. State of Maharashtra and another**, 2003(1) Mh.L.J. 849 at para 34 has observed that the

constitutional powers of this Court under Article 226 of the Constitution of India and Section 482 of the Code cannot be used for scuttling the investigation, if sufficient material on record to continue further investigation was noticed. Para 34 of the said judgment aptly supports the aforesaid view.

16. In case of State of **West Bengal and others Vs. Swapan Kumar Guha and others**, AIR 1982 SC 949, the Apex Court has observed that thus:-

“Per A.N. SenJ:

If an offence is disclosed, the High Court under Art. 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence

and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

Per Y. V. Chandrachud, C. J. and A. Varadarajan, J (Concurring with A.N. Sen,J):-

A First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

An investigation can be quashed if no cognizable offence is disclosed by the F.I.R.. it is surely not within the province of the police to investigate into a Report (F.I.R.) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases.

The condition precedent to the commencement of investigation under section 157 of the Code is that the F.I.R. must disclose, prima faice, that a cognizable offence has town committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. There right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence the Court would be justified in quashing the investigation on the basis of the information as laid or received. The power to

investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code.”

17. Apart from above, it is consistent view of the Apex Court that where the allegation in the FIR Report makes out an offence alleged, the Court cannot invoke the jurisdiction for quashing. The High Court in ordering, is not required as to the reliability of the evidence and cannot embargo upon inquiry as to whether the evidence can be accepted or not.

18. In case of **M.C. Abraham Vs. State of Maharashtra, (2003) 2 SCC 649**, the Apex Court has held thus:-

“13. This Court held in **State of Bihar V. J.A.C. Saldamha, (1980) 1 SCC 554** that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of instigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so,

whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.”

19. In view of aforesaid observations of the Apex Court, this Court cannot interfere with the investigation as it is purely within the domain of the Investigating Agency to investigate an offence and this Court cannot sit in an appeal over such investigation. However, this Court in the facts and circumstances of the present case is duty bound to ensure free and fair investigation.

20. In the backdrop of the aforesaid principles as observed herein before, in the case in hand, the accident occurred on 11.05.2023, in which the petitioner is shown to be an accused based on the complaint lodged by the respondent No.4. Subsequent to the aforesaid, during investigation, the respondent No.4, Judicial Officer is also added as an accused as is apparent from the investigation paper. Both the vehicles involved in accident were seized along with CCTV Footages. The statement of the eye-witnesses were also recorded under Sections 161 and 164 of the Code. Perusal of the aforesaid statement does not reflect that there is an element of the investigation being influenced by respondent No.4, Judicial Officer. Rather the reading of the statement recorded under Sections 161 and 164 of the Code, so also the fact that respondent

No.4 is added as an accused, sufficiently demonstrates that investigation is carried in neutral way without being influenced by the fact that respondent No.4 is a Judicial Officer. The investigation is carried out by the Senior Officer of rank Additional Superintendent of Police, Gondia so as to avoid any bias or unwarranted investigation in the matter. The investigation is not focused so as to implead the petitioner falsely in the offence in question as is noticed from the material available on record.

21. At this stage, there is enough material to infer prima facie infer the involvement of the petitioner in the offence as could be inferred from the spot panchama, RTO inspection report, statement of eye-witnesses and CCTV Footages.

22. As far as the non-acceptance of the complaint of the petitioner or that of mother of the deceased namely Dewanganabai is concerned, the said documents are made available to the Investigating Officer through present petition and it is expected by the Investigating Officer to look into the same. Apart from above, in case if the Investigating Officer decides to charge-sheet the petitioner, additional evidence if any, can be produced by him having regard to the provisions of Section 173(8) of the Criminal Procedure Code or the petitioner can examine such witnesses in his defence. However, it will be improper for us to comment in details

about the investigation carried out at this stage, as charge-sheet is not submitted.

23. As can be inferred from the observations made herein before, it can be noticed that not only the CCTV Footages were recovered and seized, but also statements of eye-witness are recorded under Sections 161 and 164 of the Code. The petitioner has failed to demonstrate any bias or malafide approach on part of the Investigating Officer so as to save respondent No.4. As stated herein before, it is reflected that respondent No.4 is also arrayed as an accused in the matter.

24. In the light of aforesaid observation, having recorded the satisfaction about the investigation carried out till this date, we deem it appropriate to dismiss the present petition.

25. The dismissal of the petition will not come in the way of petitioner to approach afresh, in case if he will be charge-sheeted or he may also apply for discharge in accordance with law.

26. Petition stands dismissed in above terms.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)