



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

CRIMINAL WRIT PETITION NO. 721 OF 2023

1. Ujwala w/o Kishor Dhawale, Aged about – 42 years, Occupation – Private, R/o Plot No.122, Lane 2, Janta Hardware, Bhavani Nagar, Pardi, Nagpur.
2. Kishor s/o Jaitaram Dhawale (Original Complainant), Aged about – 53 years, Occupation – Private, R/o – Plot No.122, Lane 2, Janta Hardware, Bhavani Nagar, Pardi Nagpur.
3. Rajendra s/o Bahuraoji Kumbhalkar, Aged about 52 years, Occupation – Private, R/o Pankaj Apartment, Behind Indrayani Hospital, Ramdaspath, Nagpur.
4. Shriramji s/o Kisanji Junghare, Aged about 76 years, Occupation : Business, R/o Plot No.750, Vinoba Bhave Nagar, Yashodhara Nagar, Nagpur.

... PETITIONERS.

VERSUS

1. State of Maharashtra, through Commissioner of Police, Nagpur City, Nagpur.
2. State of Maharashtra, through Deputy Commissioner of Police Zone-5, Nagpur.

3. State of Maharashtra, through Assistant Commissioner of Police, Zone-5, Nagpur City, Nagpur.
4. State of Maharashtra, through Police Station Pardi, Nagpur.
5. Police Inspector Sunil Gangurde, Pardi Police Station, Nagpur.
6. Police Sub-Inspector Manish Hiwarkar, Pardi Police Station, Nagpur.
7. Police Sub-Inspector, Randive, Pardi Police Station, Nagpur.
8. Police Inspector, Manohar Kotnake, Pardi Police Station, Nagpur.

... RESPONDENTS.

Shri Ishant V. Tambi, Advocate a/w Ms. Shraddha R. Shah, Advocate for the petitioners.

Shri Doifode, Addl.PP. for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATED : 03.10.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith.

2. This is a petition under Article 226 of the Constitution of

India seeking directions to carry *de novo* investigation/ further investigation with a rider to transfer the investigation to some other investigation agency.

3. Petitioner No.2 Kishor Dhawale has initially invested some amount with accused Vinod Hiwarkar, but it was not returned. It was the Petitioners' grievance that time to time under the pretext of variety of reasons Vinod took money from him. Petitioners have filed several complaints against Vinod as well as his wife namely Kalpana, but the Police did not took cognizance. Finally at the instance of the Petitioner no.2 Kishor Dhawale, the Police have registered the First Information Report on 24.08.2021 vide Crime No. 458 of 2021 for the offence punishable under Sections 420 and 406 of the Indian Penal Code. It is the Petitioners' contention that wife of the principal accused Vinod Hiwarkar namely Kalpana is serving in the Police Department, therefore, the Police have not properly carrying investigation to shield her.

4. Learned Counsel for the Petitioners took us through the various prior complaints filed by Kishor Dhawale dated 24.08.2020, 25.01.2021, 06.06.2021, 26.03.2021, which were made to different Police Authorities. In those complaints specific allegations were made

against Vinod Hiwarkar as well as against his wife Kalpana, but according to the Petitioners, she was saved by the Police. It is submitted that Petitioner no.1 Ujwala Dhawale is also the victim but her statement has also not been recorded by the Police. The Petitioners would submit that the investigation is not carried in fair manner as the Police have not endeavored to seize the bank account of principal accused and his wife. The Petitioners would submit that there are several victims, who have been cheated by Vinod and his wife, but there statements have not been recorded.

5. Learned Addl. Public Prosecutor would submitted that already investigation is complete and charge-sheet has been filed. It is submitted that during the course of investigation, statements of other witnesses have also been recorded. According to the State, since there were no specific allegations against Kalpana (wife of the principal accused), she was not made an accused.

6 *Prima facie* it reveals that Petitioner Kishor Dhawale made series of grievances to different Police Authorities, but cognizance was not taken. It is mandate of law that whenever the grievance is made regarding the commission of cognizable offence, the Police are duty bound to register a crime, however it was not happened. Moreover,

there are specific allegations that because of only wife of principal accused is serving in the Police Department, the investigation has not been conducted in fair manner. Be that as it may, the investigation is complete and charge-sheet has been filed. In reported case of ***Anand Thanur Karmuse vs. State of Maharashtra and Others (2023) 5 SCC 802*** the Supreme Court has observed that in order to do the complete justice and in furtherance of fair investigation, this Court can direct further investigation/re-investigation even charges are framed.

7. Considering the peculiar facts of this case, we are of the view that in order to meet the ends of justice, further investigation is needed in terms of Section 173(8) of the Code of Criminal Procedure. In view of that, we hereby direct the concerned Police to carry further investigation.

8. During the course of further investigation, the Police may record statements of Petitioner no.1, Petitioner no.3 and anyone coming forward putting grievance against the miscreants.

9. During further investigation due regard shall be given to the grievances made in the complaints dated 24.08.2020, 25.01.2021, 26.03.2021.

10. We made it clear that it is prerogative of the Investigating Agency to conduct the further investigation as permissible under law.

11. The Police Authorities shall complete said exercise within a period of one month and file an appropriate report to the concerned Court.

12. The Petition stands disposed of accordingly. Rule is made absolute in above terms. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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