



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 228 OF 2023

- 1] Sukhdeo S/o Dashrath Thange
- 2] Vishwanath S/o Sukhdeo Thange

Both R/o Bhorwadi, Taluka and
District : Ahmednagar

.. Petitioners

Versus

- 1] The State of Maharashtra
Through the Superintendent of Police
S.P. Office, Ahmednagar, Dist. Ahmednagar
- 2] The Police Inspector,
Nagar Taluka Police Station,
Ahmednagar, Dist. Ahmednagar

.. Respondents

...
Advocate for petitioners : Mr. D.A. Bide
APP for the respondent – State : Mr. V.K. Kotecha
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 5 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned
APP waives service for the respondents. At the joint request of the
parties, the matter is heard finally at the stage of admission.

2. The petitioners are making following prayers :-

*“C] By issuing appropriate writ, order or directions the office of
respondent Nos. 1 and 2 may kindly be directed to investigate
the impugned crime bearing FIR bearing No.I-563/2019, dated
08/11/2019 registered with the Nagar Taluka Police Station,
Ahmednagar, which is punishable under Section 143, 147, 149,
341, 323, 324, 504, 506 of Indian Penal Code and charge sheet
thereof bearing RCC No.2/2021 (Exh. “I”) afresh by appointing*

the responsible investigation officer and to submit the additional charge sheet in the matter as per the due process of law.

D] By issuing appropriate writ, order or directions the office of respondent No. 1 may kindly be directed to consider the criminal complaints of the present petitioners dated 25/09/2020 and 05/07/2021 (Exh."H") by taking cognizance against the accused persons as well as the erring officials of the office of respondent No. 1 as per the due process of law and to punished them within stipulated period.

E] The office of respondent Nos. 1 and 2 may kindly be directed to submit all these investigation papers of the impugned crime FIR bearing No.I-563/2019, dated 08/11/2019 which is now charge sheet bearing RCC No. 2/2021 (Exh."I") along with the medical injury certificates issued by the Civil Hospital, Ahmednagar dated 20/09/2021 and the same be consider as part and parcel of the RECC No.2/2021."

3. The learned advocate for the petitioners would take us through the chargesheet and would strenuously tries to substantiate the request of the petitioners for fresh investigation and initiating some enquiry against the officials who have the responsibility of carrying out the investigation properly.

4. Per contra the learned APP referring to the affidavit in reply of the respondent no. 2 would submit that the investigation has been carried out in a fair manner and based on the material that could be collected, a final report was submitted.

5. We have considered the rival submissions and perused the papers.

6. As can be gathered, on an FIR lodged by the petitioner no.1, the offence was registered. The incident is alleged to have occurred on 20-03-2019 in the morning hours when he was proceeding

along a road and going to the village. He alleged that the accused persons arrived there, accosted him and, thereafter, he was assaulted. He then approached the police station and was referred to a government hospital but since the medical officer was not present, he was merely given some tablets and, thereafter, he got admitted in a private hospital wherefrom he was discharged on 22-09-2019.

7. The learned advocate for petitioners alleges about the investigation being improper. It is a fact that allegedly, petitioner no. 2 was also assaulted on 18-08-2019. He had approached the police and was seeking to lodge an FIR, however, the police had directed him to hospital with a referral letter. However, instead of registering crime at his instance, only a non-cognizable report was registered and instead, the petitioners were sought to be implicated at the instance of the accused persons. The petitioners made several grievances before the superior officers but in vein. Even it is being alleged that the injury certificates issued by the private hospital were not received by the Investigating Officer and were not even made part of the chargesheet.

8. Affidavit in reply mentions about the petitioners having brought injury certificate of the private hospital when the Investigating Officer was on the verge of filing the chargesheet. In-fact, it mentions that several times attempts were made so that supplementary statements of the petitioners could be recorded but they did not co-

operate. The affidavit in reply also mentions that in fact, the petitioners were trying to settle the dispute with the accused persons and at the request of the petitioner no. 2 who is a practicing lawyer not to lodge the complaint that the crime was not registered. On 30-09-2019, he approached the police station and expressed his unwillingness to lodge the complaint. The petitioners kept mum till 18-10-2019 and it is only thereafter they came forward to lodge the FIR on 08-11-2019.

9. The afore-mentioned aspects particularly the specific statement in the FIR seeking to explain the delay in lodging it demonstrates that perhaps the petitioners who were intending to sort out the differences with the accused persons took time in lodging the FIR.

10. Be that as it may, in view of availability of a remedy in the form of Division Level Police Complaints Authority, since the petitioners are making allegations against the police officers, to that extent it would always be open for them to approach the authority with a specific grievance and depending upon the outcome of the enquiry, which would be a fact finding enquiry, the petitioners can resort to the appropriate remedy.

11. As far as the aspect of further investigation is concerned, in view of the observations of the Supreme Court in the matter of ***Vinubhai Hirabhai Malaviya V. State of Gujarat; (2019) 17 SCC 1***, it

would always be open for the petitioners to approach the trial court and take steps in the light of those observations.

12. Writ petition is disposed of.

13. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/