



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 CRIMINAL WRIT PETITION NO.1266 OF 2024
WITH
CRIMINAL APPLICATION NO.1988 OF 2024

AJAY CHANDRAPRAKASH BAHETI

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.D. Sapkal, Senior Counsel i/b Mr. A.K. Bhosle, Advocate for petitioner
Mr. S.S. Dande, APP for sole respondent

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 22nd AUGUST, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present writ petition has been filed for following relief :

“(C) By issuing appropriate writ, order or direction in the nature of writ the respondent may be directed to incorporate enquiry reports and allied documents filed along with the representation dated 06.05.2024 and 09.05.2024 i.e. Exh.D in the charge sheet.”

2 The petitioner is the original accused and he has also filed Criminal Application No.1988 of 2024 for quashing First Information Report

vide Crime No.109/2018 registered with Kuntoor Police Station and the entire proceedings bearing Regular Criminal Case No.29/2020 pending before learned Judicial Magistrate First Class, Naigaon, Dist. Nanded, for the offence punishable under Sections 166, 201, 409, 420, 406, 467, 468, 471, 477(A), 120(b) read with Section 34 of the Indian Penal Code and under Sections 3, 7 of the Essential Commodities Act.

3 Heard learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. A.K. Bhosale for petitioner as well as applicant and learned APP Mr. S.S. Dande for respondent in both matters.

4 It has been vehemently contended by learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. A.K. Bhosle that the petitioner is an unfortunate citizen who has been dragged into a false litigation. The investigation that has been carried out cannot be said to be fair investigation. The informant being Police Inspector of Special Squad, Nanded had lodged First Information Report on 19.07.2018 alleging that when he along with his colleagues were on patrolling duty on 18.07.2018, they got a secret information in respect of illegal hauling of essential commodities i.e. wheat and rice from the godown of FCI Jawahar Nagar, Tupa to the company of present petitioner/applicant. The informant and his colleagues started

surveilling the factory premises of petitioner secretly and found that 10 trucks were proceeding towards Krushnoor MIDC at about 8.30 p.m. All those trucks entered in company premises where the raid was conducted. Drivers were apprehended and they gave information. About 6000 gunny bags weighing 50 k.gs. each having stamp of Government of Punjab and FCI monogram were confiscated. However, the Investigating Officer had not considered the procedure of public distribution system and how the goods moved. Documents were produced before Investigating Officer by accused, but those were not considered, which were self explanatory regarding the possession/how trucks were found in the factory premises of petitioner/applicant. The accused ought to have been heard. When the accused has right of fair investigation without any prejudice, then the principle in *audi alteram partem* ought to have been adhered to. The entire charge sheet does not disclose any of the offences which are invoked.

5 Learned Advocate for the petitioner relies on the decision of the Coordinate Bench of this Court at Nagpur in **Nikhil Ashokrao Waghmare and others vs. The State of Maharashtra and another** in Criminal Application No.1346 of 2023 in Criminal Application No.573 of 2022 decided on 18.10.2023, wherein the Investigating Officer was directed to consider the documents which were relied upon by the accused. In that case reliance was

placed on **Babubhai vs. State of Gujarat and others** [(2010) 12 SCC 254], wherein it is observed that -

“The investigation into a criminal offence must be free from objectionable features and infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive.”

Further, reliance has been placed on the decision in **Vijay Tyagi vs. Irshad Ali @ Deepak and others** [(2013) 5 SCC 762], wherein following are the observations -

“48. What ultimately is the aim or significance of the expression ‘fair and proper investigation’ in criminal jurisprudence ? It has a twin purpose : Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.”

Herein also the petitioner is having right of fair investigation and as the documents of the petitioner were not considered those directions need to be given.

6 Per contra, learned APP strongly opposed the writ petition as well as application on the ground that accused cannot direct the Investigating Officer as to how the investigation should proceed. All the relevant documents in the possession of Government authority were perused and raiding party had in fact seen the trucks going inside the premises of factory owned by present petitioner. Huge grains, which were meant for public distribution system, were found in the trucks.

7 The first and the foremost fact which requires to be considered in case of criminal application, wherein the applicant intends to invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure, would show that First Information Report was lodged on 19.07.2018 and at that time it was under Sections 420, 120-B of the Indian Penal Code and Sections 3, 7 of Essential Commodities Act. However, it appears that as the investigation progressed more accused persons were transpired and, therefore, Section 166, 201, 409, 406, 467, 468, 471, 477-A read with Section 34 of the Indian Penal Code came to be added. The

investigation was complete and charge sheet was filed in the year 2020 itself. Still the present application has been filed in May, 2020. Therefore, certainly, there is delay. Further, if we consider the grounds raised for quashing the proceedings, those are almost similar to the petition which the applicant has filed separately, wherein he wants the above said direction to the Investigating Officer. Therefore, certainly, the application suffers from delay and laches, even independently. It is to be noted that prima facie evidence is collected for attracting some of the offences. We want to make it clear that all those sections under which now the charge sheet is filed may not be against the present applicant, but that does not require quashment of First Information Report or the proceedings in respect of those sections which are not applicable to the applicant. In fact, those sections would be then applicable to the co-accused and then it has to be pointed out to the learned Trial Judge or the learned Trial Judge should independently consider which section is attracted against which accused and how the charge is then required to be framed. Therefore, certainly, no case is made out for exercising inherent powers of this Court.

8 Now, as regards writ petition is concerned, the petitioner wants to invoke the constitutional powers of this Court under Article 226 of the Constitution of India. As aforesaid, the First Information Report was

registered on 19.07.2018, charge sheet has been filed in 2020 and present petition has been filed in 2024. After the investigation is over and charge sheet is filed, the Investigating Officer cannot be asked to consider the documents, which the petitioner wants to rely. The petitioner is accused and he cannot direct the Investigating Officer as to how the investigation would proceed. This writ petition also suffers from delay and laches.

9 Observations from **Babubhai** (supra) and **Vinay Tyagi** (supra) are definitely binding upon this Court. We are also of the opinion that the investigation should be fair, however, the writ petition deserves to be dismissed only on the ground of delay and laches. There is absolutely no reasonable ground given by the petitioner as to why he had not approached this Court at any earlier point of time. He has allowed the time to run against him. Hence, Criminal Writ Petition as well as Criminal Application stand dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)