



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1505 OF 2024

Rahim Rafiq Ali Moti
Age: 47 years, Occu.: Business,
R/o.7-A, Rathi Tower, Osmanpura,
Chhatrapati Sambhajanagar,
Tq. And Dist. Chh. Sambhajanagar

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya,
Mumbai-400032.
2. The Director General of Police,
Shahid Bhagatsing Road, Colaba,
Mumbai-400001.
3. The Commissioner of Police
Chhatrapati Sambhajanagar,
Tq. And Dist. Chh. Sambhajanagar.
4. The Police Inspector,
Cantonment Police Station,
Chhatrapati Sambhajanagar,
Tq. And Dist. Chh. Sambhajanagar.

.. Respondents

...
Mr. Ganesh A. Gadhe, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 14 DECEMBER 2024

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. The present petitioner by invoking the constitutional powers
of this Court under Article 226 of the Constitution of India

approaches this court for following relief :-

“B. By issuing the writ of mandamus or any other appropriate writ like in nature under Article 226 of the Constitution of India, this Hon’ble Court may kindly direct the respondents to take the steps for compliance of the order dated 06.03.2023 passed in Criminal M. A. No.4304 of 2021 by Ld. Judicial Magistrate First Class-16, Chhatrapati Sambhajnagar and submit the report as per the provisions of Section 173 of the Criminal Procedure Code 1973 expeditiously or within a period of 8 weeks.”

2. Heard learned Advocate for the petitioner. He submits that the petitioner is the informant, who lodged FIR vide Crime No.37 of 2021 with Chavni Police Station, Aurangabad for the offences punishable under Sections 406, 420, 467, 468, 471 read with Section 34 of Indian Penal Code. The investigation was carried out, however, ‘B’ Summary was filed before the concerned Magistrate, whereupon the present petitioner had filed Protest Petition bearing No.4304 of 2021. After hearing, the learned Judicial Magistrate First Class, (Court No.16), Aurangabad by order dated 06.03.2023 had given directions to Investigating Officer to investigate the matter properly under Section 173 of the Code of Criminal Procedure and file report. Though the order is

passed by the learned Magistrate, there is absolutely no progress in the investigation. The petitioner had approached the Commissioner of Police, Aurangabad so that he can give directions to the investigating officer to conduct the further investigation. However, the Commissioner of Police has also not done anything. Hence, the petitioner has no option but to approach this Court. The judicial order is not complied with and therefore, interference is required by this Court. He relies on the decision in ***Amar Nath Chaubey Vs. Union of India and ors.*** [AIROnline 2020 SC 898], wherein it has been observed that :-

“Investigation and closure report are extremely casual and perfunctory in nature. Investigation and closure report do not contain any material with regard to nature of investigation against other accused including respondent for conspiracy to arrive at conclusion for insufficiency of evidence against them. Closure report is based on *ipse dixit* of Investigating Officer. Supervision note of Senior Superintendent of Police (Rural), in circumstances leaves much to be desired. Investigation appears to be a sham, designed to conceal more than to investigate. Police has primary duty to investigate on receiving report of commission of cognizable offence. This is statutory duty under Code of Criminal Procedure apart from being constitutional obligation to ensure that peace is maintained in society and rule of law is upheld

and applied. Further investigation was not possible as informant had not supplied adequate materials to investigate is a preposterous statement, coming from police. Police has statutory duty to investigate into any crime in accordance with law as provided in Code of Criminal Procedure. Investigation is exclusive privilege and prerogative of police which cannot be interfered with. But if police does not perform its statutory duty in accordance with law or is remiss in performance of its duty, court cannot abdicate its duties on precocious plea that investigation is exclusive prerogative of police. Once conscience of Court is satisfied, from materials on record, that police has not investigated properly or apparently is remiss in investigation, court has bounden constitutional obligation to ensure that investigation is conducted in accordance with law. If Court gives any directions for that purpose within contours of law, it cannot amount to interference with investigation. A fair investigation is, but necessary concomitant of Art.14 and 21 of Constitution of India and Supreme Court has bounden obligation to ensure adherence by police.”

3. At the outset, it is to be noted that here the present petitioner had filed the FIR stating that accused Nos.2 to 7 have committed offence under Section 406, 420, 467, 468, 471 read with Section 34 of Indian Penal Code. It is the case of the informant that he is a member of one Yuvan Co-operative Society. Accused Umedbhai, Sirajbhai, Abdullbhai and Azizbhai had

prepared forged resolution of 10.11.2013 in respect of immovable property in question. One Smt. Ambika Zalke is the auditor and she has prepared forged account. The other accused persons have also prepared forged documents and executed a fake deed for consideration and cheated the society. The said sale deed is dated 11.11.2013. Though the 'B' Summary was filed after the investigation, the learned Magistrate was of the opinion that the allegation against the accused is that they have prepared forged resolution and sale deed. The hand writing expert's opinion was essential, but the investigating officer has not taken specimen handwriting. The auditor's report also does not say about sale deed. But the investigating officer has taken into consideration the fact that cancellation of sale deed by way of compromise does not mean that offence is not committed by the accused and, therefore, further investigation was directed.

4. Now, the situation is that without approaching the concerned Magistrate, the petitioner has directly come to this Court by way of this petition. We are definitely bound by the observations from **Amar Nath Chaubey (Supra)**, however, it can be seen that those observations were taking into consideration the facts involved in the case. In the said decision, the decision

in **Manohar Lal Sharma Vs. Principal Secretary and Ors., [(2014) 2 SCC 532]** was referred, wherein it is observed that in very exceptional cases, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not *bona fide* or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens. In the said case of **Amar Nath Chaubey (Supra)**, charge-sheet was filed against the accused and trial was about to begin and the facts were that father of the petitioner therein was shot dead at his residence by unknown assailants. During the investigation, name of only one accused appears to have been transpired and then the charge-sheet has been filed. Under those circumstances, the above-said observations have been made and senior officer was appointed to carry out the further investigation in the matter. Here, already the learned Magistrate has taken cognizance and had directed the investigating officer to carry out the further investigation and,

therefore, the petitioner ought to have approached the Magistrate first, before trying to invoke the constitutional powers of this Court under Article 226 of the Constitution of India and, therefore, we reject the present petition with liberty to the petitioner to approach the concerned Magistrate.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm