



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

946 CRIMINAL WRIT PETITION NO. 1281 OF 2021

PANDURANG BALASAHEB KAILEWAD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for the Petitioner : Mr.Sonkawade Amarsinha Dharmaraj
APP for Respondent/State : Mrs.Pratibha J. Bharad

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**CORAM : SANJAY A. DESHMUKH, J.
DATED : 14th FEBRUARY, 2024.**

PER COURT :-

. By this Writ Petition, the petitioner has prayed following reliefs :-

“B. By way of Writ of Certiorari and or any other appropriate Writ, Order or Direction in the like nature, the order passed by the Ld. Chief Judicial Magistrate, Aurangabad dated 30.09.2020 in Crime No.09/2019 thereby granting “A” Summary Report may kindly be quash and set aside.

C. By setting aside the order dated 30.09.2020 in Crime No.09/2019, passed by the Ld. Chief Judicial Magistrate, Aurangabad, the matter may kindly be remanded back and direction be given to hear the matter afresh thereby giving the full opportunity to the petitioner.”

2. The learned advocate for the petitioner submitted that the petitioner has lodged the report bearing C.R. no.9 of 2019 under sections 406, 420, 467, 468, 471 read with 34 of the Indian Penal

Code. After investigation, the Investigating Officer submitted "A" Summary report, in which he observed that the disputed signatures and natural signatures of the accused and informant are sent to the handwriting expert, however, the report is not received. "A" Summary Report was submitted by the Investigating Officer to the Economic Offence Wing, Aurangabad City, therefore, the "A" Summary report was sent subject to condition that after receiving the report of handwriting expert, it has to be accepted. "A" Summary was submitted before the Chief Judicial Magistrate, however, the Chief Judicial Magistrate sanctioned the "A" Summary without giving any reason.

3. The learned advocate for the petitioner submitted that the order is passed without any reason and no such handwriting expert's report was called while sanctioning the "A" Summary report. He, therefore, prays that the Investigating Officer ought not to have sent such proposal to the Economic Offence Wing and Economic Offence Wing ought not to have submitted an application before the Chief Judicial Magistrate, Aurangabad for accepting the "A" Summary subject to receiving handwriting expert report.

4. This Court by order dated 17.01.2024 directed Vedantnagar Police Station, Aurangabad to place on record handwriting expert's report regarding verification of signatures. Accordingly, the report (4 pages) is submitted today, which is marked as "X-1" for identification.

5. The report shows that there are dissimilarities in writing habits of signatories.

6. The learned advocate for the petitioner pointed out that forwarding application to the Chief Judicial Magistrate itself is ab-initio void, illegal and premature action on the part of Economic Offences Wing, Aurangabad. He, therefore, prayed to set aside the impugned order of Chief Judicial Magistrate and to give directions to the concerned Investigating Officer or Police Station Officer to investigate the said crime and proceed further in accordance with law.

7. The learned APP strongly opposed the application and submitted that impugned order passed by the learned Chief Judicial Magistrate, Aurangabad is legal and correct. It is lastly prayed to dismiss Writ Petition.

8. While sanctioning the “A” Summary, it is necessary to issue notice to the informant as per the law laid down in the case of ***Vishu Kumar Tiwari Vs State of Uttar Pradesh through Secretary Home, Civil Secretariat, Lucknow and another*** reported in (2019)8 SCC 27.

9. The impugned order is against the principles of natural justice as the notice was not issued to the informant for hearing of “A” Summary. Further “A” Summary was accepted/sanctioned without

giving any reason. The reasons are soul of the judgment and orders. The parties are entitled to know the reasons. This cardinal principle is part of judicial discipline and judicial duty of each Court. It is also mandatory duty of Court to apply judicial mind while passing such order by giving an opportunity to the persons interested and likely to be affected as per the law laid down in the case of **Vishnu Kumar Tiwari (cited supra)**. It is also jurisprudence of writing of the judgment and order to give convincing reasons. It has to be followed scrupulously. Learned Chief Judicial Magistrate, Aurangabad failed to perform its judicial duty which caused injustice to this petitioner and his right to have and know the reasons is seriously affected. The learned Chief Judicial Magistrate, Aurangabad thus erred while accepting the "A" Summary without giving any reasons and opportunity to hear to informant. The handwriting expert's report was not there, such premature act of sending of "A" Summary report to the Court is not legal and sustainable. It was accepted by Chief Judicial Magistrate, Aurangabad mechanically without applying judicial mind. Thus such failures on the part of Courts are giving birth to the litigation like this writ petition. Therefore, impugned order deserves to be quashed and set aside. The Writ Petition deserves to be allowed in terms of prayer clauses "B" and "C". It is allowed accordingly.

10. The Investigating Officer or Police Station Officer of the concerned Police Station is further directed to proceed further with

the investigation of the crime No. 9 of 2019 in view of the report of handwriting expert, a copy of which is marked as "X-1", annexed with this Writ Petition. Writ Petition is allowed and disposed of.

(SANJAY A. DESHMUKH, J.)

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