

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 13 OF 2024

Namrath Nithyananda Shetty

Applicant
.. (Orig. Complainant)

Versus

Police Inspector, Lonikand Police Station and
Ors.

.. Respondents

-
- Mr. Amarlal H. Ramrakhiani, Advocate i/by Mr. Vaibhav P. Shinde for Applicant / Complainant.
 - Mr. Jignesh Gor, Advocate for Respondent Nos.2 and 4.
 - Ms. Dhanalakshmi Krishnaiyer, APP for the State.
-

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 28, 2024.

P.C.:

1. Heard Mr. Ramrakhiani, learned Advocate for Applicant; Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State.

2. In view of the issue involved in the present Criminal Revision Application (for short “**CRA**”), it needs to be heard finally so that appropriate order can be passed.

3. Briefly stated, Revision Applicant is aggrieved with the impugned order dated 02.08.2023, *inter alia*, dismissing his complaint under Section 203 of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) by the learned JMFC, Pune.

4. The principal ground to challenge the order is with reference to a specific direction contained in the previous order dated 29.06.2022 passed by the same Court, however, by the predecessor JMFC. This order is appended at Exhibit “C” – page No.32 of the CRA. By virtue of this order, directions were given to the Investigating Officer (IO) by the Court to carry out further investigation with reference to specific directions and observations of the Court in that order and file a report within a period of one month from the date of the order. That report ought to have been filed on or before 28.07.2022. Admittedly, it was not filed. Sequitur of this is that the IO has not complied with the said order.

5. Ground to challenge the impugned order is specifically with respect to the directions contained in the previous order dated 29.06.2022. Mr. Ramrakhiani, learned Advocate has candidly informed the Court that on 21.06.2023 complainant through his Advocate filed a *pursis*. While drawing my attention to the said *pursis* he would submit that complainant was virtually tired and harassed and resultantly filed the said *pursis* which is evident after reading the contents. He would submit that after passing of order dated 29.06.2022 the matter was listed before the Trial Court on 9 different occasions upto 14.06.2023 and adjourned without any orders. In that view, complainant filed the *pursis* to stop further inquiry under Section 202 of the Cr.P.C. as suggested by the Court. He would submit that not even once, the Court

called upon the IO to comply with the order dated 29.06.2022.

6. Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State would oppose the Application and would submit that it is at the Applicant / complainant's own volition that *pursis* was filed and the matter was heard finally leading to passing of the impugned order. Hence, it is now not open to him to re-agitate the same issue and re-visit the order dated 29.06.2022. I have perused the order dated 29.06.2022 and the impugned order. On going through both the orders, what I find intriguing is the fact that transactions involved in the present case have already been taken into cognizance in the report of the IO submitted previously in compliance of the previous order dated 11.09.2019. Inquiry was conducted by IO under Section 202 of Cr.P.C. and report dated 25.10.2021 was filed in the Court, which was taken on record and marked as Exhibit "11". It is only thereafter that the matter was heard by the learned Trial Court on 29.06.2022. The directions contained in paragraph Nos.4 and 5 of the order dated 26.06.2022 in the opinion of the Trial Court would require further investigation as it would unearth the real facts in the case under investigation. The directions were given in view of the inadequacy of investigation seen from the previous report dated 25.10.2021 which was taken on record below Exhibit "11".

7. In that view of the matter, directions contained in the order dated 29.06.2022 ought to have been complied with. Admittedly, record indicates that they have not been complied with. The concerned IO has gone completely scot-free and it is seen that between 29.06.2022 to 14.06.2023 even though the matter was listed before the Trial Court on 9 different occasions, the Trial Court did not find it necessary and suitable to seek an explanation from the IO for not filing the further investigation report. Hence, the IO is directed to file his personal Affidavit for not abiding by the order 29.06.2022 and explain to the Court the reasons for non-compliance of the directions contained in the said order. Such Affidavit of the IO shall be filed within a period of one week from today positively. IO shall explain the reasons for non compliance and filing of the report as directed by the said order dated 28.07.2022.

8. In so far as the merits of the present case in the CRA are concerned, the impugned order which is annexed at page No.27 of the CRA proceeds on the premise that Court will have to see whether there is evidence in support of the specific allegations of complainant and not whether the evidence is sufficient to warrant a conviction.

9. In this background, when the learned Trial Court itself came to a categorical conclusion that further investigation on the specific issue delineated in paragraph Nos.4 and 5 of the impugned order

dated 29.06.2022 was required, it was the duty of the prosecution to ensure that the said order was complied with and the further report was filed. I say this because there is a categorical direction for filing of further report by the IO under Section 202 in the impugned order in paragraph No.9, *inter alia*, relating to reflection of the monetary transaction and the fact that the accused has already paid the alleged amount. Nothing compelled the prosecution to comply with the directions contained in paragraph Nos.4 and 5 of the order dated 29.06.2024 to carry out further investigation and file the further report as called for by the Trial Court.

10. The impugned order when it refers to the report filed by the IO does not state the date of the report and it would be refer to the report dated 25.10.2021, which was taken on record and marked below Exhibit “11”.

11. Merely on the basis of the above reason, which is the only reason stated, the impugned order has been passed dismissing the complaint. In that view of the matter, I am of the *prima facie* view that the impugned order is not sustainable. I shall hear the Respondents. However, private Respondents and the learned APP are at liberty to file additional Affidavit, if any, as directed by the IO to oppose the Application. Affidavits shall be filed within a period of one week from today.

12. IO in the present case is directed to remain present on the next adjourned date on VC. Ms. Krishnaiyer, learned APP is directed to give the VC link to the IO, on the date on which this matter will be listed on board.

13. Learned Advocates are directed to complete their pleadings on or before the next date.

14. Parties are directed to file their compilation, Affidavits, if any, if so desired and exchange the same in advance with the other side so that on the next adjourned date this Court can hear the CRA and decide the same.

15. Stand over to **05th December 2024.**

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.11.28
18:24:32 +0530