



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

11 CRIMINAL WRIT PETITION NO. 207 OF 2023

RAJABHAU SHRIRAM PHAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Mr. Rahil Riyazoddin Kazi.
APP for Respondents : Mr. A. M. Phule.
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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 13th February, 2025.

Per Court:

. The present petition has been filed for direction to respondent No.1 to handover the investigation in respect of Crime No.282 of 2022, registered with Parali City Police Station, Parali, District Beed, for the offence punishable under Sections 143, 147, 148, 149, 323, 324, 307, 427, 506 and 120-B of Indian Penal Code and under Section 135 of Maharashtra Police 1951, to State C.I.D.

2 Heard the learned counsel for the petitioner and the learned APP for the respondents.

3 Statement was made that charge-sheet has been filed and then the learned counsel appearing for the petitioner has made available a copy of the charge-sheet.

4 The petitioner is the original informant, who had filed the said FIR contending that he alongwith one Suresh Bhagwanrao Phad, Mahesh Sakahari Munde, Siddheshwar Gutte and 4-5 persons were chitchatting in front of his company's office at Shivaji Chowk, Parali around 03:00 pm on 19th December, 2022. The mother of the informant was contesting for the post of Sarpanch at Kanherwadi and the counting was scheduled on 20th December, 2022. According to the informant, he alongwith his friends were discussing about the said counting. Around 05:00 pm, all eleven named persons and 3-4 unknown persons came at the spot and started assaulting the informant and his friends. When the informant asked them as to why they are assaulting them, then all of them told that why he was contesting against one Manik Phad and they will not leave the informant, Shriram Munde and Vishal Rode alive. As they have enjoyed the post of Sarpanch for about fifteen years, said Manik Phad has told that these persons should be eliminated. Thereafter, role is attributed to each of the accused and then it is stated that due to the assault by the stone and iron rod, he as well as other persons received serious injuries. The informant then went inside his four wheeler, but all the accused persons started pelting of stones, as a result of which, damage was caused to the car. The informant then says that Rajesh Phad, Rishikesh Phad, Vikas Munde and Bhagwan Phad told that gun

should be taken out and shot at the informant. Again the same dialogues were stated to be repeated. The informant says that he got himself rescued from the clutches of the accused and went to the police station. The police had then referred him to medical examination. The other persons also were referred to medical examination.

5 The learned counsel for the petitioner submits that when the FIR was lodged, Section 307 of the IPC was included. However, when the charge-sheet is filed, the said Section has been dropped and the communication to that effect has been given by the investigating officer on 9th February, 2023. Furthermore, all the accused were not arrested. Only one person was arrested and the investigating officer is, in fact, a tainted police officer involved in the offence punishable under Section 302 of the IPC, but that Section came to be dropped, but in Criminal Writ Petition No.431 of 2022 decided on 10th March, 2023, that step was set aside by restoring Section 302 of the IPC against the police officer and therefore, it is necessary that the investigation in this case to be handed over to the State C.I.D.

6 The learned counsel for the petitioner relies on the judgment in the case of ***Nirmal Singh Kahlon Vs. State of Punjab and others*** with companion matter, reported in, ***(2009) 1 Supreme***

Court Cases 441, wherein the Honourable Supreme Court has held that even the victim has a right of fair investigation. He then relies on the judgment in the case of **Babubhai Vs. State of Gujarat and others** with companion matter, reported in, **(2010) 12 Supreme Court Cases 254**, wherein also it is held that the investigation must be fair, transparent and judicious.

7 The learned APP submits that no *mala-fides* have been shown against the investigating officer. The investigating officer has clearly stated as to how each of the accused is involved in the case. It was in his discretion to drop Section 307 of the IPC, for which he has given reasons and therefore, there is no necessity to direct either further investigation or re-investigation.

8 The first and the foremost fact to be noted is that dropping of Section 307 of the IPC at the time of charge-sheet, is not going to make much difference, in view of the fact that though on the basis of his own interpretation the investigating officer by giving reasons made a communication to the learned Judicial Magistrate First Class on 9th February, 2023 for dropping Section 307 of the IPC. But the powers of the Court are not restricted. We would point out that as per Section 323 of the Cr.P.C., if at any stage, the Magistrate considers that the case can be committed to the Court of Sessions, then he can do so.

Therefore, even in this case, if at any point of time, the said situation arises, which attracts the ingredients of Section 307 of the IPC, then the Magistrate may have recourse to Section 323 of the Cr.P.C. Therefore, that cannot be the ground for re-investigation or further investigation by an independent agency like the State C.I.D.

9 As regards the alleged non-seizure of the gun is concerned, it is to be noted that in FIR also it is stated that those accused persons uttered that gun should be taken out. First of all, there cannot be such dialogue in chorus. To whom that direction was given, is not clear. Further, some of the witnesses have stated about the said fact. Those witnesses, who have stated that they had heard "बंदुक काढा व याला गोळ्या घाला. त्याला पळून जावु देवु नका. याला मारल्याशिवाय आपण सरपंच होणार नाहीत आणि त्याच्या सोबत मला व श्रीराम मुंडे यांना सुध्दा जिवे मारुन टाका व एकदाचा ताण संपवुन टाका" appears to be on the basis of the disclosure by the informant to them, because witness Sachin Landge states that he was not aware as to who had assaulted him. Witness Vishal Rode says that he was assaulted by accused Rishikesh and Sandeep and thereafter, as regards the gun is concerned, it is on the basis of the information given by the informant to him. The same is as regards witness Shriram Munde. Under such circumstances, there is no question of seizure of any gun.

10 In respect of seizure of scythe, non-seizure thereof may not make much difference, if otherwise evidence shows that such weapon was used. The spot *Panchanama* shows that one rod and wooden log was seized from the spot itself.

11 We would like to rely on ***Babubhai Vs. State of Gujarat and others*** (supra) itself, wherein after taking note of the decision in ***Nirmal Singh Kahlon Vs. State of Punjab and others*** (supra), it is observed that not only fair trial, but also fair investigation is part of the Constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. However, it is also the observation that “the above referred judgments of this Court make it clear that scheme of investigation, particularly, Section 173(8) of the Cr.P.C. provides for further investigation and not of re-investigation. Therefore, if the Court comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the Court may direct for further investigation and ordinarily not for re-investigation.

 The expression “ordinarily” means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. “Ordinarily” excludes “extra-ordinary” or “special circumstances” Thus, it is evident that in exceptional

circumstances, the Court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation *de-novo*, wherein the case presents exceptional circumstances.”

12 Here, the petitioner has failed to show the exceptional circumstances and therefore, no case is made out for exercise of Constitutional powers of this Court. Hence, the writ petition stands dismissed.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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