



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.975 OF 2021

Bhujang s/o Vithalrao Godbole
Age: 37 years, Occu.: Service,
R/o. At Present Plot No.28,
First Floor, Ranjanwan Society,
N-9, CIDCO, Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Director General of
Anti-Corruption Department,
At Sir Pochkhanwala Road,
Worli, Mumbai,
Maharashtra State – 400 030.
3. Smt. Kalpana Barawkar,
Superintendent of Police,
Anti-Corruption Bureau,
Nanded Range, Sneha Nagar,
Nanded.
4. Smt. Archana Patil,
Additional Superintendent of Police,
Anti-Corruption Bureau,
Nanded Range, Sneha Nagar,
Nanded.
5. Bharat Humbe,
Deputy Superintendent of Police,
Anti-Corruption Bureau, Parbhani,
Unit Office, Amay Nagar, Parbhani.
6. Smt. Nilam Vavhal,
Assistant Commissioner of Police,
(Administration), Anti-Corruption
Bureau, Mumbai.

7. Shyamsundar Tak,
Reader, Deputy Superintendent of Police,
Reader Branch, Anti-Corruption Bureau,
Superintendent of Police (ACB),
Nanded Range.
8. Mohan Uttam Chavan,
Age: Major, Occu.: Nil,
R/o. At Post Chitgiri,
Tal. Bhokar, Dist. Nanded.

.. Respondents

...
Mr. S. S. Kazi, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 14 FEBRUARY 2025

ORDER :

. Present petition has been filed invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India initially for directions to respondent Nos.1 and 2 to suspend respondent No.3 and hand over the investigation of the complaint filed by the petitioner on 25.03.2021 to Central Bureau of Investigation (for short 'C.B.I.') or any other independent officer not below rank of Commissioner of Police and to register the FIR against respondent No.3 and the other erring officers, however, by way of amendment under the orders of this Court on 23.11.2021, the said prayer was deleted

and following prayers were added :-

“(B) By issuing writ of mandamus or any other writ or direction in like nature, the respondent Nos1 and 2 be directed to appoint an Officer not below rank of Commissioner of Police to investigate the complaint dated 25.03.2021 made by the petitioner.

(B-1) By issuing writ of mandamus or any other writ or direction in like nature, the investigation regarding the complaint dated 25.03.2021 be handed over to Central Bureau of Investigation.

(B-2) By issuing writ of mandamus or any other writ or direction in like nature, the respondent Nos.1 and 2 be directed to register the F.I.R. against respondent No.3 pursuant to the complaint dated 25.03.2021 given by the petitioner.

(B-3) By issuing writ of mandamus or any other writ or direction in like nature, the respondent Nos.1 and 2 be directed to take action against the respondent No.3 for acting against the interest of Anti Corruption Bureau Department.”

2. Heard learned Advocate Mr. S. S. Kazi for the petitioner and learned APP Mr. A. M. Phule for respondent Nos.1 and 2/State.

3. It appears that in view of order dated 07.12.2021, notice was issued to respondent Nos.1 and 2 only. Perused the affidavit-in-reply by Mr. Lakhmi Gautam, Additional Commissioner of

Police, (DIG rank), Anti Corruption Bureau, Mumbai, affidavit-in-rejoinder of the petitioner and again the affidavit-in-reply to the rejoinder by the same authority.

4. The petitioner appears to have taken charge as Police Inspector in Anti Corruption Bureau, Nanded in April 2018 and respondent No.3 had joined as Superintendent of Police, Anti Corruption Bureau, Nanded Range since August 2019. The petitioner states that he was under the direct control of respondent No.3. Learned Advocate for the petitioner submits that it is the contention of the petitioner that the petitioner has made several complaints to the higher authorities in view of the fact that she was not taking necessary efforts for the raids or in the complaints those were filed and she used to supply information in advance to one Mohan Chavan, who was not a police employee. Said Mohan Chavan in turn was to give clue to the accused and family members and thereupon it was affecting the raids. There were several audio recordings those were made by the petitioner to support his contention, so also another police officer Humbe had made complaint against respondent No.3 as well as a Social Organization by name Mahiti Adhikar Sanrakshan Samiti Maharashtra Rajya had also made a

complaint in respect of the activities of respondent No.3. The activities of respondent No.3 were amounting to criminal activity and, in fact, there was huge amount of bribe that was collected by respondent No.3 from various persons. When all these things were informed in his complaint dated 25.03.2021, a judicial officer was appointed to conduct the preliminary inquiry and thereupon the petitioner had submitted the 15 audio recordings, 3 complaint applications and 2 WhatsApp chatting screenshots as supporting evidence to his complaint, yet DIG, Anti Corruption Bureau, Maharashtra State, Mumbai has not taken any action. Now, the affidavit has been filed by an officer who is not a party to the proceedings and he relies on the inquiry that was conducted through Smt. Nilam Waval, Assistant Commissioner, Administration. It is said that complaint has been thoroughly inquired by the competent officer and proper inquiry has been conducted by the department and no substance has been found which is against the evidence that was produced. In the rejoinder, this petitioner has stated as to how the inquiry that was made is illegal and supporting to his contention. He has submitted the circulars and the Government Resolutions. In the additional affidavit-in-reply on behalf of respondent No.2, once

again the facts have been reiterated and it was the coincidence that the said deponent Mr. Lakhmi Gautam had worked along with respondent No.3 together at Buldhana. However, now he is Additional Commissioner of Police, Anti Corruption Bureau, Mumbai and, therefore, he has filed the affidavit-in-reply on behalf of respondent No.2. The petitioner submits that when the evidence was made available by the petitioner as well as it was with the another complainant, there is absolutely no inquiry or much less proper inquiry against respondent No.3. Upon inquiry, learned Advocate for the petitioner submits that the petitioner had even made a complaint to the Home Minister for the inquiry against respondent No.3, however, no Departmental Enquiry has been initiated and, therefore, the petition deserves to be allowed.

5. Learned APP strongly opposes the petition and relies upon the two affidavits-in-reply filed by Mr. Lakhmi Gautam and submits that when the inquiry has been made and no substance has been found, then the petition cannot be considered under the constitutional powers of this Court.

6. At the outset, it is to be noted that the petitioner accepts that his statements have been recorded under the inquiry which appears to have been initiated upon his complaint dated

25.03.2021. Now, his objection is that it is not conducted by an appropriate authority or in other words, it is conducted by a junior officer, who is junior to respondent No.3. Even if this may be a fact to be taken note of, but at the same time the petitioner cannot come under a criminal writ petition stating that whatever inquiry has been made is wrong. For Departmental Enquiry, the concerned department would be having power or the concerned officer might be having power to conduct a preliminary inquiry, rather it is a must. If preliminary inquiry is not by an appropriate authority, then the forum is different. Taking into consideration the present prayer clauses 'B' to 'B-3', the petitioner prays that his complaint dated 25.03.2021 be investigated. First of all investigation will not start unless there is an FIR. The petitioner himself has not lodged the FIR or it is not his case that he had gone to lodging the FIR, but it was not taken by any appropriate authority. He has not demonstrated that the requisites in ***Lalita Kumari Vs. State of Uttar Pradesh and others, [2014 (2) SCC 1]*** have been followed by him. Even then he could have filed a private complaint before the learned Special Judge, under the Prevention of Corruption Act, with appropriate prayers. Instead of doing all these things, he has directly come to the High Court.

Thereafter, in prayer clause 'B-2' he prays that the directions be issued to respondent Nos.1 and 2 to register the FIR against respondent No.3 pursuant to complaint dated 25.03.2021. Here, we are guided by the decisions in ***Sakiri Vasu Vs. State of Uttar Pradesh and others, 2008 (2) SCC 409, T.C. Thangaraj Vs. V. Engammal & others, 2011(12) SCC 328, Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and others, 2016(6) SCC 227*** and ***M. Subramaniam and others Vs. S. Janaki, 2020(16) SCC 728***, wherein the Hon'ble Supreme Court has held that the High Court cannot direct registration of the FIR when the option is under Section 156(3) of Code of Criminal Procedure. Of course, we are unable to get from the complaint dated 25.03.2021 given by the petitioner as to which offence respondent No.3 has committed. If he wants to say that it is under the prevention of Corruption Act, then certainly as per Section 22 of the Prevention of Corruption Act, certain provisions of Code of Criminal Procedure are applicable. As per Section 5(4) of the Prevention of Corruption Act, it is prescribed that a Special Judge under this Act shall be deemed to be a Magistrate and, therefore, the petitioner was in fact at liberty to approach the competent Court under Section 156(3) of the Code of Criminal Procedure. At the

cost of repetition, in view of the above said decisions of the Hon'ble Supreme Court, we are of the view that this Court cannot direct registration of the FIR also. That means, even as regards the Departmental Enquiry is concerned, the Criminal Writ Petition is not maintainable and even as regards registration of the FIR is concerned, as aforesaid, we cannot direct the registration of the FIR. In view of the same, no case is made out for exercise of powers under Article 226 and 227 of the Constitution of India. The writ petition stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm