



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 114 OF 2024

Faruk Kabir

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr.Jitendra Tiwari a/w. Ms.Kunickaa Sadanand for Petitioner.

Ms.A.A. Takalkar, A.P.P. for Respondent Nos.1 to 3-State.

Ms.Padma Shelatkar a/w. Mr. Namit Singh Mehta for Respondent Nos.4 to 6.

A.P.I. Mr.Sajjan Subhash Landge, Versova Police Station, Mumbai is present.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 16th January 2024.

P.C. :

1) In pursuance of directions issued vide Order dated 27th December 2023, the police have apprehended Respondent Nos.5 & 6 and they have been released on bail by the trial Court. We will discuss with the said aspect in the later part of the present Order.

2) In view of the deliberations we have with the learned Advocate/ s for the Petitioner and also for Respondent Nos.4 to 6, we are *prima facie* of the opinion that, the dispute and/or differences predominantly between the Petitioner and Respondent No.6 can be resolved amicably through the process of mediation and with the able assistance of the learned Advocates appearing for the respective parties.

3) The learned Advocates for the respective parties submitted that, they will hold a meeting to discuss the issues for amicable settlement in presence of their clients and will make an endeavour to resolve the issues involved in the present Petition and allied litigation, if any, between the said parties. Their good gesture is welcomed by this Court.

4) At the joint request of learned Advocates appearing for the respective parties, stand over to 25th January 2024, at 2:30 p.m..

5) During the course of arguments, learned Advocate appearing for Respondent Nos.4 to 6 submitted that, for an offence wherein the punishment is not more than seven years, the Investigating Officer of CR No. 756 of 2023 registered with Versova Police Station, Mumbai, arrested the Respondent Nos.5 & 6 without issuing a notice under Section 41-A of Criminal Procedure Code (for short, "Cr.P.C."), which is the mandate of law.

6) We therefore called upon the Investigating Officer Shri Sajjan S. Landge, Assistant Police Inspector attached to Versova Police Station to produce the record of investigation for our perusal.

7) The learned A.P.P. tendered across the bar a file containing record of investigation. The said file consists in all 168 pages. The pagination on the file is effected by the learned A.P.P. at our request and the same has been done with a pencil on the right/left hand side corner of each page. We have retained the said file for dictating the Order in chamber and the same will be handed over to the concerned Officer through the learned A.P.P. on

18th January 2024.

8) After perusing the said file, we got perplexed. The record indicates that, the notice as contemplated under Section 41-A of Cr.P.C. has in fact not been served upon the Respondent Nos.5 & 6, who as per the investigation of C.R. No. 756 of 2023 are accused Nos. 1 & 2. Perusal of Case Diary No.7 dated 31st December 2023 reveals that, as the notice under Section 41-A of Cr.P.C. could not be served upon the accused persons, the same was served upon Smt. Anu Harish Khanna i.e. the mother of accused Tejas Harish Khanna at Amrutsar, Punjab. We are unable to accept such a novel idea of service of notice adopted by the Investigating Officer.

8.1) According to us, this is not in consonance with the law laid down by the Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar & Anr., reported in (2014) 8 SCC 273*. According to us, the law does not recognize service of notice under Section 41-A of Cr.P.C. upon somebody else instead of accused persons. This is clear breach of Section 41-A of Cr.P.C. by the concerned Officer and requires serious attention by the highest Authority of the Police Department i.e. the Director General of Police, Maharashtra State.

8.2) There is yet another facet to the present case. Perusal of record of investigation clearly indicates that, Case Diary of the present crime, is maintained in utter defiance of Section 172(1-B) of Cr.P.C. The Case Diary is maintained, not only in the form of loose sheets but those are scattered

throughout the file.

8.3) Case Diary Nos.1 to 6 are filed at page Nos. 127 to 139. Case Diary No. 7 is at page 167. However, Case Diary Nos. 8, 9 & 10 are filed at filed at page Nos. 19, 20 & 21.

9) As per the record of this Court, after noticing such a breach of Section 172 (1-B) of Cr.PC. various Orders have been passed by this Court from time to time since the year 2011 till 2018. In furtherance of those judicial Orders, the Office of the Director General of Police, Maharashtra State has issued Circulars from time to time i.e. 11th February 2011 till at least 6th December 2018. The Home Department, Government of Maharashtra has also issued a Circular dated 11th February 2011 directing to maintain Case Diary as per Section 172 (1-B) of Cr.PC. and the said Circular has been circulated to the Office/Offices of all the stakeholders more particularly mentioned therein. All the Circulars direct the concerned Investigating Officer to maintain Case Diary as per Section 172 (1-B) of Cr.PC..

9.1) It appears that, the directions issued by the Director General of Police have not been percolated to the lower rank of the Police Officers, who are conducting investigations at ground level and the said Circulars have found its place in the files of the concerned Police Stations.

9.2) It is thus apparent that, apart from breach and violation of Section 172 (1-B) of Cr.PC., the present investigating Officer has also

committed breach of various Circulars issued by the Office of the Director General of Police and the Home Department, State of Maharashtra.

9.3) According to us, this is a serious matter of concern. The Investigating Officer Shri Sajjan Landge has not only shown disrespect but has flouted the Orders/Directions issued by the Office of the Director General of Police.

10) We therefore direct the Director General of Police, Maharashtra State to look into the matter personally and adopt necessary legal action against the said Police Officer.

10.1) We are at pains to issue such direction in view of the fact that, we are regularly coming across with the breach of Section 172 (1-B) of Cr.PC. and the directions issued by the Office of the Director General of Police.

10.2) We direct the Director General of Police not to delegate its powers to any subordinate Officer while undertaking said exercise. We also expect from the Director General of Police to imbibe upon the all the Police Officers the seriousness in following the directions issued by the highest Police Authority in the State of Maharashtra i.e. Director General of Police and not to take such directions lightly and/or casually. The said directions have been issued to follow it and not to violate as per the whims of the Investigating Officer(s).

10.3) We expect from the Director General of Police to adopt stringent remedial measures in that behalf.

10.4) For compliance of the aforesaid directions, we grant four weeks time to the Director General of Police.

11) Registry to place the matter on board on 13th February 2024, for compliance of Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

OMKAR
SHIVAHAR
KUMBHAKARN

Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2024.01.17
19:50:28 +0530