

(2013) 08 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 1666 of 2012

Dr. Vijay Chandraprakash Sharma

APPELLANT

Vs

Joint Commissioner (Crime) and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Bombay Police Act, 1951 — Section 23, 24, 25, 26, 27A

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 354, 506, 506(2), 509

Citation : (2013) 5 ABR 902 : (2013) ALLMR(Cri) 3962 : (2014) 1 BomCR(Cri) 763

Hon'ble Judges : S.C. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Advocate : Ajit J. Shobhawat instructed by Mr. R.K. Bharuka, for the Appellant; P.H. Kantharia, APP for State/Respondent Nos. 1 to 4, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Rule. Respondent Nos. 1 to 4 waive service. Respondent Nos. 5 to 8 are duly served. None appears on their behalf. By consent Rule made returnable forthwith. By this petition under Article 226 of the Constitution of India, the petitioner seeks following reliefs:-

(a) the Hon"ble Court be pleased to issue writ, order, direction in the nature of mandamus or similar writ be issued against the respondents directing them to take action against (1) Police Inspector Nishikant V. Tungare, (2) Police Sub-Inspector Bhat (3) Police Sub-Inspector Sashikant Sawant and (4) Police Inspector Mahadeo Koli and/or

(b) the Hon"ble Court be pleased to issue writ, order, direction in the nature of mandamus or similar writ be issued against the respondents directing them to submit the report to this Court as to what action they have taken against (1) Police Inspector Nishikant V. Tungare, (2) Police Sub-Inspector Bhat (3) Police Sub-Inspector Sashikant Sawant and (4) Police Inspector Mahadeo Koli;

(c) the damages be awarded to the petitioner for the mental agony, spoil of

reputation and heavy monetary loss suffered by the petitioner.

In the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, , the Hon"ble Supreme Court made the following pertinent observations:-

12. The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay.

2. On this petition, notice was issued by this Court on 24th July 2012 and it was heard further on 30th November 2012 on which date leave to amend was sought and to add a party respondent. After that leave was granted, notice was issued to the newly added respondent with further direction that the first respondent to the petition should file a reply dealing with averments made in the petition within four weeks. The other respondents were also given liberty to file a reply. Thereafter, the petition was listed from time to time and after it was ready for admission, we have heard it.

3. The petitioner alleges that he is a Doctor by profession and practicing as Cosmetic Surgeon in Mumbai for the last 25 years. He is acclaimed and well known in his field. The respondents to this petition are the Police Officers and the State, including those attached to the concerned police station at the relevant time.

4. The petitioner states that each of these officers were at the relevant time attached to the Khar police station. Since the petitioner is skilled in his profession and reputed several high profile clients come to him. One Sheetal Bansod, came to the house of the petitioner stated to be representing one T.V. Channel and to take the interview of the petitioner. It is stated that though the interview was over, the lady followed the petitioner to his office seeking his answers to some more questions. It is alleged that during this interview, the petitioner molested the said Sheetal Bansod. An F.I.R. was lodged on 12th January 2008 and registered as C.R. No. 14 of 2008. There was no preliminary investigation. The petitioner was arrested and later on released on bail. He was shocked and surprised by the conduct of Sheetal Bansod. The petitioner alleges that one more similar complaint was made by one Rima Gupta, who had come to the petitioner for certain surgery. The F.I.R. was lodged at her instance and is numbered as C.R. No. 17 of 2008.

5. The petitioner addressed a letter to the Sub-Inspector, Khar Police Station Mumbai on 8th February 2008 stating that just to malign his reputation and to extort money two false cases have been lodged. He requested that investigation be carried out on scientific lines, including lie detection test to expose the

conspiracy.

6. The petitioner also addressed a communication to Additional Commissioner of Police, Bandra (West), raising similar grievances and alleging that such complaints are made for cheap publicity as well and, therefore, he desires to come out clean.

7. The petitioner addressed another letter to the Commissioner of Police and all these communications are referred to in the petition from paras 5 to 8.

8. Thus, the petitioner was throughout complaining that he has enough proof to demonstrate as to how these allegations against him are false. But, despite such pleas, the police went ahead and filed a charge sheet on 15th July 2008 in the Court of Metropolitan Magistrate, 9th Court, Bandra alleging offences punishable u/s 354 and 506 of Indian Penal Code.

9. An affidavit was filed on 26th September 2008 by the complainant Sheetal Bansod stating as to how the allegations against the petitioner were made because of some misunderstanding. Thus, this affidavit was filed by her in the Court and the contents of the petitioner's complaint are reinforced by a supporting affidavit of one Niranjana Parihar dated 16th September 2008. After this, it is stated by the petitioner that case No. 1012/pw/2008 was decided on 11th August 2010 by the learned Additional Chief Metropolitan Magistrate 9th Court, Bandra and the petitioner was acquitted.

10. Relying upon the judgment, once again the petitioner states that he personally met the Joint Commissioner of Police (Crime) and apprised him of his ordeal, trauma and injustice. The Joint Commissioner heard him patiently and then directed the Assistant Commissioner of Police (ACP) Detection-1, North, GBCB, C.I.D. Kandivali (West) to call for records and proceedings of the petitioner's case and to find out whether two ladies made any complaint and sent a report within 15 days.

11. The A.C.P. Mr. C.D. Ulwekar recorded statement of 14 witnesses and he arrived at a conclusion that both these offences have been registered falsely against the petitioner. The petitioner has relied upon the reasons in the report as to why such a conclusion was reached. In paras 15 and 16 of the petition, this is what is alleged:-

15. The petitioner states that the said C.D. Ulwekar further after giving his finding and pointing out the irregularities has recommended various things which are enumerated as under:-

(a) The petitioner be acquitted from C.R. No. 14 of 2008 for the offence u/s 354 and 506(2) and C.R. No. 17 of 2008 for the offences u/s 354 and 509 of I.P.C. registered with Khar Police Station;

(b) C.R. No. 14 of 2008 for the offences u/s 354 and 506(2) and C.R. No. 17 of 2008 for the offences u/s 354 and 509 of I.P.C. registered with Khar Police

Station be classified as "C"

(c) Both the aforesaid offences are being classified as "B" however, if the same are classified as "B" there would be law and order problems therefore, it would be proper if it is classified as "C".

(d) Irresponsible and neglected attitude on the part of the following police officer in C.R. No. 14 of 2008 for the offences u/s 354 and 506(2) and C.R. No. 17 of 2008 for the offences u/s 354 and 509 of I.P.C. registered with Khar Police Station is clear.

(i) Police Inspector Tungare has prepared seizure panchanama in C.R. No. 14 of 2008 for the offence u/s 354 and 506(2) by sitting in Khar Police Station. The statements of witness Ku. Rupa Waghmare and Ku. Mashhuda Tungekar are typed on type writer in the police station behind their back and also they have prepared spot panchanama by mentioning the name of complainant Sheetal Bansod though she was not present at the time of spot panchanama and prepared the panchanama by mentioning false name. In view of this it appears that Police Inspector Nishikant V. Tungare has prepared false panchanama.

(ii) Police Inspector Bhat has not taken cognisance nor made inquiry in the application dated 20/12/2007 filed by Smt. Rima B. Gupta Hindu 30 years complainant in C.R. No. 17 of 2008 for the offence u/s 354 and 506(2) by sitting in Khar Police Station. The statements of witness Ku. Rupa Waghmare and Ku. Mashhuda Tungekar are typed on typewriter in the police station behind their back and also they have prepared spot panchanama by mentioning the name of complainant Sheetal Bansod though she was not present at the time of panchanama and prepared the panchanama by mentioning false name. In view of this it appears that Police Inspector Nishikant V. Tungare has prepared false panchanama.

(iii) So far as Police Inspector Shashikant Y. Sawant has registered the C.R. No. 14 of 2008 u/s 354 and 506(2) of IPC. However, the petitioner was to be arrested after through inquiry. He has not carried any inquiry and avoided to do so. Therefore, it appears that without any reason the petitioner is arrested;

(iv) Mahadeo Pandurang Koli, Police Sub-Inspector, Khar Police Station has registered C.R. No. 17 of 2008. At the time of registration of the said offence, he was supposed to do thorough inquiry with the complainant Rima B. Gupta and her husband Bhimraj K. Gupta. Without verifying as to whether they have filed any earlier application with the police station, he has registered the offence hurriedly and arrested the petitioner hurriedly. Therefore, it is clearly established the irresponsible act of the aforesaid police officers there is deterioration of police image in the eyes of the people and the possibility of not keeping faith on the police cannot be ruled out.

(v) The petitioner was supposed to attend the world Medical Seminar on 13th January 2008 where the petitioner is main orator on behalf of India but, due to

negligent and irresponsible act of the aforesaid police officer, the petitioner was arrested without any reason. Therefore, the petitioner could not attend the said seminar at America and irreparable loss caused to the petitioner. It appears that the aforesaid four police officers of Khar Police Station are responsible for the said loss to the petitioner.

(vi) The C.D. Ulwekar on the basis of contemporary investigation recommended clear terms that appropriate legal action shall be taken against (1) Police Inspector Nishikant V. Tungare, (2) Police Sub-Inspector Bhat (3) Police Sub-Inspector Sashikant Sawant and (4) Police Inspector Mahadeo Koli from Khar Police Station.

16. The petitioner says and submits that from the aforesaid facts and circumstances it is crystal clear that a deep rooted intrigue was hatched against the petitioner to spoil his reputation and casting aspersion for personal gain for those who took most advantage out of it. The said C.D. Ulwekar in clear terms recommended appropriate legal actions shall be taken against four officer such as (1) Police Inspector Nishikant V. Tungare, (2) Police Sub-Inspector Bhat (3) Police Sub-Inspector Sashikant Sawant and (4) Police Inspector Mahadeo Koli of Khar police station who are reprehensible for undermining the dignity of the petitioner. The said four officers are solely and exclusively responsible for the negligent in their duty as a result the petitioner was arrested without any reason for the fast and frivolous case filed against him. The petitioner suffered heavy loss and his reputation was spoiled because of the said false and frivolous case. Further, it is an affront to the petitioner despite the said recommendation it seems no action have been taken against those officers.

12. Thus, the petition proceeds to allege that no action has been taken against four officers and, therefore, the petitioner addressed a notice through his Advocate on 15th March 2012 stating that when there is a report submitted on 3rd June 2008 of the Police Department, which indicts four police officers, then, not taking further action would mean that the department condoned their act and does not redress the grievance of those who have been found to be falsely involved in a crime and as proved before the competent court of law.

13. The petitioner has, therefore, waited for considerable length of time and again complained that because of negligence of the police officers, he had to undergo the trauma of arrest. All that the petitioner received in response was a phone call from one Shikha Joshi, stating that a complaint was filed at the Khar police station against him and alleging offences punishable u/s 354 of IPC. The petitioner received a call and equally there was some mail in the mail-box wherein it was stated that the petitioner should settle the matter with the said Shikha Joshi or face the consequences. The petitioner once again lodged a written complaint to the Khar police station for police protection. The petitioner has specifically alleged that without verifying the allegations in the complaint of Shikha Joshi, only going by past experience and without carrying out proper investigation, the police proceeded to register an F.I.R. and the matter is still

pending.

14. The petitioner, therefore, states that if timely action had been taken further persons would not have dared to file a complaint against him. It is on these allegations and reiterating them in the memo of the petition that the above reproduced reliefs are claimed in the petition.

15. An affidavit in reply was filed by none other than the Joint Commissioner of Police (Crime) and he has in the first affidavit dated 15th January 2013 stated as under:-

2. I say that while collecting the records, I came to know that the enquiries on application made by the petitioner were conducted by Assistant Commissioner of Police, Ulwekar and Assistant Commissioner of Police, Prakash Wani, both then posted to Detection Crime Branch, Mumbai, and their reports were sent for initiating necessary steps to the Additional Commissioner of Police, West Region, Mumbai. The report of the Additional Commissioner of Police, West Region Mumbai, dated 3rd January 2013 was received by my office on 4th January 2013. On perusal of the said report, it was found that on the basis of the reports of enquiry as stated above forwarded by Crime Branch, Mr. Shengal, the then Assistant Commissioner of Police, Bandra Division, Mumbai was entrusted to conduct further enquiry by the then Dy. Commissioner of Police, Zone-9 Mumbai. As the said report dated 3rd January 2013 was ambiguous, a letter dated 10th January 2013 was forwarded by my office calling report as to what action has been taken on the enquiry report of Assistant Commissioner of Police, Shengal. Even, to deal with the parawise comments of the present petition, some more information is awaited from the office of Additional Commissioner of Police, West Region, Mumbai and therefore, there is delay in filing the affidavit in reply and compliance of the order dated 30th November 2012 of this Court.

16. Thus, he sought permission to file a detailed affidavit in reply and, thereafter, proceeded to file a detailed affidavit, according to the said Joint Commissioner. In this affidavit dated 7th February 2013 it is stated in paras 8 and 9 as under:

8. I say that after the Order dated 30th November 2012 was passed by this Court, I vide my letter dated 19th December 2012 directed the Additional Commissioner of Police, West Region, Mumbai to submit his action report on the basis of the report submitted by the respective Assistant Commissioners of Police Crime Branch, Mumbai. I, further, say that the Additional Commissioner of Police, West Region, after scrutinising three reports submitted by A.C.P. Ulwekar, A.C.P. Wani and A.C.P. Shengal submitted his report dated 23rd January 2013 to me. It was concluded in the said report that the suggestions given by A.C.P. Ulwekar are baseless and his recommendations cannot be accepted and no action is suggested against the police officers.

9. I, therefore, most respectfully say that officer of the rank of Additional Commissioner of Police has already taken decision of not to take action against respondent Nos. 5, 6, 7 and 8 after taking into due consideration all the reports

submitted by respective Assistant Commissioners of Police, Crime Branch, Mumbai. Therefore, the prayer which the petitioner is seeking regarding action to be taken against the police officers respondent Nos. 5, 6, 7 and 8 may kindly be rejected.

17. After this affidavit was filed and the contents of the same were brought to the notice of the petitioner's Advocate, he urged that the Joint Commissioner has taken a contradictory stand. He has discarded the report given by the Assistant Commissioner of Police, Mr. Ulwekar and that is on the strength of another report dated 23rd January 2013 from the Additional Commissioner of Police, Western Region.

18. Mr. Shobhawat, learned Counsel for the petitioner has also invited our attention to both the affidavits and submitted that the police department in its enthusiasm to exonerate their officials have disbelieved them in the process. It is not as if the report of Mr. C.D. Ulwekar has been disbelieved because the D.C.P. Zone IX vide his letter dated 18th November 2008 addressed to the ACP Mr. Shengal of Bandra Division forwarded the reports of the respective Assistant Commissioners of Police, Crime Branch who had conducted enquiry. However, the ACP Shengal after perusing these reports arrived at a conclusion that in respect of Crime No. 14 of 2008 since charge sheet is filed, it would be appropriate to wait for the decision of the Court and in respect of Crime No. 17 of 2008, to take appropriate decision after completion of investigation. Accordingly, ACP Mr. Shengal submitted the report on 26th December 2008.

19. Mr. Shobhawat submits that, therefore, it is abundantly clear that from 2008 until the matter was moved in this Court in the year 2012 and even after the judgment of acquittal recorded in favour of the petitioner, the police authorities have kept quiet and have brushed aside all the reports. When this Court did not accept their plea that the incident may be of 2008 but once there is acquittal and even during the pendency of the criminal case, the petitioner was making repeated complaints, then, it is their obligation to enquire into his allegations as it would be open for the police officers concerned to defend themselves in disciplinary proceedings. At this stage, there was no need to record an opinion that there is no substance in the petitioner's complaint. In this process, even the reports of the officers have been discarded and disbelieved. The higher officials cannot rely upon some report of 2013 and close the matter. The very officer, ACP Shengal on whose report the Joint Commissioner has heavily relied upon had not stated that there is no substance in the allegations. What he had earlier said was that since the case is pending, it would be better to take the requisite steps after the same is over. Such reports cannot, therefore, be conclusive in any manner. In letter and substance, this Court's order has not been complied with and, therefore, this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India and issue a writ of Mandamus as prayed.

20. Mrs. Kantharia, learned APP appearing for State of Maharashtra, on the other hand has relied upon affidavits filed and the annexures thereto and submitted

that each of the allegations have been enquired into. If they are enquired into, it is found that there is no substance in the complaint against the police officials, then, merely because another view is possible or that the petitioner desires to pursue his allegations does not mean that a fresh enquiry should be held and into old and stale allegations. For all these reasons, she submits that official as high as Joint Commissioner of Police on affidavit found that report submitted to him with regard to the complaint of the petitioner discloses that the allegations are without any substance, then, the petition should be dismissed by relying upon his statement and particularly when there is no rejoinder affidavit. She, therefore, prays that the petition be dismissed.

21. We have, with the assistance of the learned Advocate for petitioner and APP, perused the petition and all affidavits together with annexures. The Joint Commissioner of Police had filed an affidavit in this Court and his stand is as recorded above. In the first affidavit, he says that the report of Mr. Ulwekar, ACP and Mr. Prakash Wani, ACP both then posted at Detection Crime Branch who submitted his report were sent for initiating necessary steps to the Additional Commissioner of Police (ACP), West Region, Mumbai and who opined that a further enquiry was held and which culminated in a report of the Deputy Commissioner of Police Zone IX dated 3rd January 2013. The Joint Commissioner is bold enough to say that this report was ambiguous. Therefore, a letter dated 10th January 2013 was forwarded by his office calling for a report as to what action has been taken on the enquiry report of Mr. Shengal. He did this purportedly to comply with the order passed on 30th November 2012 by this Court.

22. At Exh. F to the affidavit is the report of the Additional Commissioner of Police forwarded to the superior. What the Additional Commissioner has done is to castigate his own officers viz., Mr. Chandrakant Ulwekar and Prakash Wani. He has termed their reports as biased and partial. He has relied upon the reports of ACP Mr. Shengal and termed it as just and reliable.

23. While arriving at such conclusions in his report to his superiors what this Additional Commissioner of Police has done is to only analyse the three reports of the police officers before him. One does not find any opportunity being given to the petitioner to substantiate and prove his allegations against the police officials. While culling out the contents of the report of three police officers what one finds is that the Additional Commissioner of Police has summarised the findings and conclusions in each of them. However, he has not recorded as to how he arrived at the above conclusion and in the absence of the petitioner. Rather he has termed the petitioner's complaint as baseless and without substance because, according to him, the petitioner avoided prosecution and chose to compromise the matters. We are appalled and disturbed at such state of affairs in the police department. Possibly, they are unaware of the requirement of holding inquiry in such serious cases. In every such case what we find is that right from the inception an attempt is made to cover up and defend the police

officers to the hilt by refusing to hold inquiry against them. While we appreciate that those entrusted with the duty of maintaining law and order are frequently facing such allegations and at the hands of accused but what one finds is that the over-enthusiasm and the anxiety in closing the proceedings by some cryptic report sets a dangerous trend and precedent. There is then no guarantee for a citizen that justice will be done to him. The fundamental principle that justice should not only be done but seen to be done has never been brought to the notice of the Superior Officers in the Police Department. Every Enquiry cannot be behind the back of the complainant like petitioner and in the secrecy of chambers and offices of the department. A regular and proper disciplinary/departmental inquiry would ensure that the petitioner's allegations are enquired into by an Independent Inquiry Officer and in accordance with the principles of natural justice. If the allegations are as serious as requiring three officers to make preliminary investigation record statements of witnesses and submit their reports, then, surely, in the facts of the present case, there was no need to take an adamant stand and avoid holding a departmental enquiry. The seriousness of the allegations of the petitioner is such that he has not only relied upon his complaints but he is also armed with the judgment of acquittal in one of the criminal cases against him. He has specifically relied upon not only the statements of the complainants but those accompanying them in his office and who have sworn on oath that the complaint made by a lady against the petitioner, Ms. Sheetal Bansod is false. Surely, therefore, when such is the complaint made and the petitioner was undergoing the trauma of arrest and facing investigation, then, that grievance of the petitioner needed to be looked into and with some responsibility. The outcome or result of the disciplinary proceedings is immaterial and irrelevant but they ought to be fair and transparent and the petitioner could have then no cause to complain. To our mind, the allegations in the present case are such that if the Additional Commissioner of Police is required to forward a report after scrutinising the petitioner's complaint and grievances so also the charges against the police officials, then, all this in the absence of petitioner and without giving him any opportunity to appear and substantiate the same, smacks of unfairness, unreasonableness and total arbitrariness.

24. While we are aware of the pivotal role played by the police officers in maintenance of law and order, yet, the power conferred to deal with different and varied situations is coupled with a duty and has to be exercised in accordance with law. The police force is not above law. If that was the case, the Bombay Police Act, 1951 would not have contained provisions enabling the Superior Police Officers to discipline their own force. That the State has chosen highly placed police officials to deal with the cases of indiscipline, misconduct and dereliction of duty and conferred in them, the powers to initiate disciplinary proceedings and award punishment, is clear from Chapter III of the Bombay Police Act, 1951 containing sections 23, 24, 25 and 26. There are appeals provided against the order of punishment to the State Government itself or to such officers as the

State may by general or special order specify.

25. Section 27A of the Bombay Police Act contains the power of State Government or Director General and Inspector General to call for record of any enquiry or proceedings and equally by section 27B confers power of review in the State Government or Director General and Inspector General of Police. In *Dayal Singh and Others Vs. State of Uttaranchal*, the Hon''ble Supreme Court of India outlined the difference between Dereliction of Duty or carelessness and misconduct. At para 21, the Hon''ble Supreme Court held as under:-

21. Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. This Court in the case of *State of Punjab and Others Vs. Ram Singh Ex. Constable*, stated that the ambit of these expressions had to be construed with reference to the subject matter and the context where the term occurs, regard being given to the scope of the Statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires maintenance of strict discipline. The consequences of these defaults should normally be attributable to negligence....

26. That there are inbuilt checks and safeguards while interfering with the life and liberty of a person but if the complaint is that such safeguards and protection have been disregarded, causing harassment to an aggrieved citizen, be it the complainant or accused, then, there is a larger duty and in public interest to enquire into such complaints and allegations. Thus, the law maintains a balance and while not demoralising the police force with frivolous and unnecessary allegations and complaints, equally, it provides for such matters to be enquired into. Merely because police official is involved, he need not be unduly protected and shielded from enquiries and disciplinary proceedings. We find that this balance has not been noticed and what we have observed as above is justified, if one peruses carefully the affidavit in reply and the paras reproduced therefrom. The tendency not to hold enquiries even in serious allegations of bribery, corruption, neglect of duty and misconduct is on the rise. We are constrained to make these observations because in numerous matters before us, we have directed that the police force should take note of their own directions contained in circulars and office orders. We had in the past emphasised the importance of the built in mechanism of enquiry into the allegations against police officers, which has been set out in the office order dated 7th may 2010 and the prior circular of 5th July 2008. Therefore, it is not as if some closed door preliminary or cursory hearing at which no one is allowed will meet the requirement of equity, fairness and justice in all cases. True it is that every complaint or allegation need not be enquired into but at the same time a decision which assures the citizen that even police officers will not go scot free if they

misconduct themselves, is the minimal guarantee and which should be evident from the actions of superiors. Every complaint need not be pushed under the carpet. Therefore, on the general assumption that every complaint of an accused is because he is disgruntled and dissatisfied with the police, it need not be summarily dismissed.

27. In the present case, we find that the superior police officers and those enjoined with a duty to act in public interest have acted in violation of principles of natural justice in not giving any opportunity to the petitioner to place his version and to substantiate the allegations made by him. The principle is violated, when a disciplinary authority without exercising his own judgment and without giving parties an opportunity of meeting the point of view adopted by a senior officer, gives his decision, based on the reports submitted to him by his juniors. This principle is also violated where such an authority acts in pursuance of predetermined policy, without considering the merits of each individual case (See *Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others*, .)

28. In the present case, the above principles aptly apply, because, not only the Joint Commissioner of Police has accepted the report of Mr. Vishwas Nangare Patil, Additional Commissioner of Police and discarded those of atleast one of his juniors but he did all this without bothering to invite the petitioner leave alone giving him an opportunity of proving his allegations. That one of the criminal complaints against the petitioner resulted in his acquittal was enough in the given facts and circumstances to afford such a reasonable opportunity to the petitioner. The very conclusion which Mr. Himanshu Roy, the Joint Commissioner of Police has reached in this case could have been reached but after due adherence to the rule of law and the principles of natural justice. That the Joint Commissioner of Police was the competent authority and to whom the files were referred for his ultimate opinion and conclusion is eloquent enough. That the presumption in all such cases that the highly placed and superior officials will act with responsibility, care and caution and would not misuse their powers, stands rebutted. The Joint Commissioner has construed the orders passed by this Court as if he was directed to take a final decision. That no direction of the Court and in this particular case to hold an enquiry can be interpreted as giving a go by to the rule of law and legal provisions, is too elementary to be reiterated. This Court's order to file reply after verifying the allegations does not mean dispensing with a proper disciplinary enquiry. In the affidavit the Joint Commissioner has justified that he acted in pursuance of the orders and directions of this Court and thus has performed his duty. However, the order passed on 30th November 2012 merely directed the first respondent to file a reply dealing with averments in the petition. That such an affidavit has been filed and after duly considering the allegations and the report of the senior officials, undoubtedly shows that the Joint Commissioner has before filing the affidavit satisfied himself about the allegations of the petitioner. However, what the affidavit is silent about and fails to state is whether in all such endeavours, did he ever bother to give any notice

and hear the petitioner. That he has not, is clear. To a great extent, he has been influenced by the fact that Sheela Bansod has settled and compromised the matter with the petitioner. That in relation to other complaint by Ms. Rima Gupta, registration of the C.R. was after some investigation. Therefore, before giving a certificate to Khar police station and particularly respondent Nos. 5 to 8 that they have performed their duty in accordance with law, the least that was expected of such superior official was to give an opportunity to the petitioner to appear before him. That the subsequent conduct of the petitioner is hardly relevant when the issue at stake is the discipline in the police force. That the police force is dedicated and works hard to serve the citizens is not reason enough to close enquiries or that the criminal cases are pending or that they are settled is equally no ground. The merits of the complaints by two ladies are wholly irrelevant when the issue is completely distinct and that of breach of discipline and abuse of powers by police officers in dealing with persons like petitioner. Therefore, filing this affidavit exhibits the tendency to uphold the version of the police and discard that of the complainant straight away and without any hearing.

29. In the above circumstances, we are of the view that the petitioner has made out a sufficient case for interference by this court in its inherent jurisdiction and to ensure that principles of natural justice and rule of law is abided equally by the police force. We, therefore, issue a writ of mandamus directing the respondent Nos. 3 and 4 to enquire into the allegations made by the petitioner against the respondent Nos. 5, 6 and 7 to this petition afresh. That such an enquiry should not be entrusted to the Joint Commissioner of Police Mr. Himanshu Roy but to other superior official is a direction which must follow the above discussion. Therefore, we direct that the enquiry be entrusted to a competent authority in terms of the provisions regarding regulation, control and discipline of the police force, contained in Chapter III of the Bombay Police Act, 1951. The enquiry, preferably be entrusted to an official in the level of Special Inspector General or any other officer but superior in rank to that of Joint Commissioner. Rule is made absolute in above terms. The enquiry as above be initiated and concluded in terms of our directions within a period of four months from the date of receipt of a copy of this order.