

(2019) 12 BOM CK 0098

In the Bombay High Court

Case No : Criminal Writ Petition No. 183 Of 2014

Kishor And Anr

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 151, 151(1)
Constitution Of India, 1950 — Article 21

Citation : (2019) 12 BOM CK 0098

Hon'ble Judges : Z.A. Haq, J; M.G. Giratkar, J

Bench : Division Bench

Advocate : P.S. Tiwari, T.A. Mirza, S.M. Karkare, P.S. Tidke

Judgement

Z.A. Haq, J

1] Heard.

2] The petitioners have complained about illegal and high handed action by the respondent nos. 5 and 6 (Police Inspector and Police Constable) against the petitioners, and have sought reliefs as per the following prayers:-

"1. Issue any appropriate writ, order or direction and thereby declare that the detention of the petitioners by the respondent nos. 5 and 6 under Section 151 (1) of the Cr. PC was illegal, in the interest of justice.

2. direct the respondent no. 1 to conduct an enquiry and thereby take appropriate action against the respondent nos. 5 and 6 for illegally detaining the petitioners and thus usurping upon the fundamental right of the petitioners guaranteed under Article 21 of the Constitution of India, in the interest of Justice.

3. Quash and set aside the action of the respondent no. 3 purported to be one under Chapter VIII of the Code of Criminal Procedure and the proceeding thereto initiated against the petitioners.

4. Issue any appropriate writ order or direct the respondent no. 3 not to take any

coercive action against the petitioners, in the interest of justice.

5. Issue any writ order or direction and thereby direct the respondent no. 1 to investigate into the illegal action on the part of the respondent no. 3 and his subordinates who have failed to follow the directions issued by this Hon'ble Court in the judgment in the case of Rajesh S/o Suryabhan Nayak Vs. State of Maharashtra and others reported in 2006 ALL MR (Cri) 1861 and if found guilty by this Hon'ble Court appropriate action be taken against them as provided under law for defying the orders of this Hon'ble Court, in the interest of justice.

6. Pass any appropriate writ order or direction and thereby direct the respondent nos. 1 to 3 to pay compensation of Rs. 5 lakh to each of the petitioner for the illegal detention and for humiliation and molestation of their fundamental right to live life with dignity as enshrined in Article 21 of the Constitution of India, in the interest of justice."

3] In 2013 and 2014, disputes about trusteeship of Shri Mirannath Maharaj Deosthan, Deoli were going on before the authorities under the Maharashtra Public Trusts Act. Counter claims were made by the rival groups and there was dispute whether the petitioner no. 1 was Secretary of the executive committee of the public trust or not.

On 25/12/2013, Suresh Rokde had lodged a report with the respondent no. 4 - Police Station against the petitioner no. 1 stating that the petitioner no. 1 had come to the temple on 24/12/2013 at about 7 pm and had asked for the keys of cupboard where the documents of the trust were kept, and when the informant told him that the keys were with Pundlik Deoraoji Ughade - President of the trust, the petitioner no. 1 abused the informant and threatened to break open the cupboard and take away the papers / documents. After enquiry, the police authorities found that the offences complained of were non-cognizable and note of it was taken accordingly.

4] On 19/01/2014, the respondent no. 7 lodged report against the petitioners stating that on 19/01/2014 at about 11:30 am, Suresh Rokde informed him on phone that the Ex-Secretary (petitioner no. 1) had been to the temple and had opened the lock. The respondent no. 7 further stated in the report that Pundlik Deoraoji Ughade - President of the trust had also called him and had asked him to go to Mandir, and when the informant went to Mandir, both the petitioners (father and son) were sitting in the office examining certain papers / documents and when the informant tried to stop them from examining the papers / documents, they abused him and threatened him to assault. Again, enquiry was undertaken and as it was found that cognizable offence was not made out, note to that effect was taken by the police authorities.

5] Surprisingly, action under Section 151 (1) of the Code of Criminal Procedure was taken against the petitioners, the petitioners were detained on 05/02/2014 at 5:00 am at the police station and detention of the petitioners continued till 12 noon when according to the respondent nos. 5 and 6, the petitioners were taken

to the Executive Magistrate who directed release of the petitioners on furnishing of bond / surety. There is no dispute about the action taken by the respondent nos. 5 and 6 under Section 151 (1) of the Code of Criminal Procedure and execution of the bond / surety by the petitioners for their release.

The grievance of the petitioners is that action under Section 151 (1) of the Code of Criminal Procedure and their detention was totally illegal and result of abuse of power and authority by the respondent nos. 5 and 6. The petitioners claim to be reputed citizens of the town. The petitioner no. 2 is a medical practitioner, having the qualifications B.H.M.S. The petitioner no. 1 was the Managing Trustee of Shri Mirannath Maharaj Deosthan, Deoli, and according to the petitioners, the petitioner no. 1 is presently also the Secretary of Deosthan. These facts support the claim of the petitioners that they enjoy good reputation in the town.

6] Considering the nature of controversy, this Court passed orders on 03/11/2014 and then on 10/11/2014 and directed APP to produce the original record. Learned APP failed to produce the record till 29/11/2019, when the petition was called out for final hearing. In view of the earlier orders, this Court passed an order on 29/11/2019 directing the respondent no. 3 - Tahsildar to produce the record and proceedings at the time of hearing. The respondent no. 3 filed an affidavit showing his inability to produce the record and proceedings stating that it was not traceable. Hence, we passed an order on 10/12/2019 directing the Collector, Wardha to cause an enquiry in the matter and submit report. Accordingly, learned Collector, Wardha has submitted report pointing out that the record is not traceable and as per the last entry of the record, it was in the custody of Smt. Usha Arun Yete, Naib Tahsildar who retired from service on 31/03/2015 and has expired on 09/09/2019. We find that there has been serious lapse on the part of the respondent nos. 1 to 6 in not producing the record and proceedings inspite of the orders passed by this Court on 03/11/2014 and 10/11/2014. At that time, there was no impediment in producing the record and proceedings. In these facts, we are constrained to draw adverse inference against the respondents.

7] Learned advocate for the respondent no. 6 submitted that the respondent no. 6 had no option but to follow the orders of his superior i.e. respondent no. 5 and he had taken action as per the orders given to him by the respondent no. 5.

8] Learned APP and learned advocate for the respondent no. 5 submitted that the respondent no. 5 had rightly taken action as per Section 151 (1) of the Code of Criminal Procedure, as two reports were lodged against the petitioners and there was an apprehension that the petitioners may commit cognizable offence and their arrest was necessary to prevent commission of cognizable offence.

9] To say the least, the justification given for taking action as per Section 151 (1) of the Code of Criminal Procedure is misleading and an attempt to cover up the illegal act. Against the petitioner no. 2 - Dr. Indraprasad S/o Kishor Futane, there was only one report i.e. dated 19/01/2014. Moreover, the respondent no. 5

himself found that the first information report could not be registered for cognizable offence on the basis of that complaint. Though there were two reports against the petitioner no. 1 - Kishor S/o Laxmanrao Futane at the relevant time, again the respondent no. 5 after causing an enquiry found that the first information report for cognizable offence could not be registered against the petitioner no. 1 also. Moreover, registration of two reports against the petitioner no. 1 or registration of one report against the petitioner no. 2 for non-cognizable offence cannot give cause for taking preventive action under Section 151 (1) of the Code of Criminal Procedure against the petitioners.

10] Section 151 (1) of the Code of Criminal Procedure reads as follows:-

"Section 151. Arrest to prevent the commission of cognizable offences.

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented."

The police officer may take action as per Section 151 (1) of the Code of Criminal Procedure against a person, only if he has knowledge of a design of commissioning of any cognizable offence, or if it appears to him that commission of cognizable offence cannot be prevented unless preventive action is taken against the person who may commit cognizable offence. Except for the explanation given on behalf of the respondent no. 5 that two reports were registered against the petitioners, nothing is placed on record to justify the preventive action. Knowledge to the police officer of a design to commit any cognizable offence and formation of opinion by the concerned police officer that commission of cognizable offence cannot be prevented unless preventive action is taken against the proposed offender is sine qua non for taking preventive action as per Section 151 (1) of the Code of Criminal Procedure. Depriving a person of his liberty guaranteed by Article 21 of the Constitution of India cannot be left to the whims and wishes of the police officer, and if it is permitted it would be conferring arbitrary and unbridled powers on the police officers / authorities. It is important to note that knowledge to the police officer about the design to commit any cognizable offence by a person has to be reflected from the record showing the details of proposed preventive action against that person. Similarly, the opinion of the police officer that commission of cognizable offence cannot be prevented unless preventive action as per Section 151 (1) of the Code of Criminal Procedure is taken should also be reflected from the record and the action cannot be justified by stating to that effect in the reply filed before the Court. In the present case, the respondent no. 5 has not pointed out anything from the record and has also not stated in the reply filed by him that he was having knowledge that the petitioners were designing to commit any cognizable offence. The respondent no. 5 has not pointed out any material from the record and has not stated in the reply that at the relevant time, he had reason to believe that commission of cognizable offence could not be prevented without

taking preventive action against the petitioners.

11] In the above facts, we find that the petitioners have suffered due to the illegal and high handed action of the respondent no. 5 which appears to be motivated also. Learned advocate for the petitioners has rightly relied on the judgment given by the Division Bench of this Court at Aurangabad in the case of Dattatraya S/o Mahadu Tikkal vs. The State of Maharashtra & Ors. reported in 2014 ALL MR (Cri) at page 31 to support the claim for grant of compensation. We have already discussed that the petitioners enjoy good reputation in the town.

12] Hence, the following order is passed:-

(a) We hold and declare that detention of the petitioners by the respondent no. 5 under Section 151 (1) of the Code of Criminal Procedure was illegal and we quash the action taken by the respondent no. 3 under Chapter VIII of the Code of Criminal Procedure.

(b) We hold that the petitioners are entitled for compensation of Rs. One Lakh each, the compensation being payable by the respondent no. 5 - Dhananjay Sayare.

(c) The respondent no. 5 shall deposit the amount of compensation with the registry of this Court till 30/01/2020.

On deposit of the amount, Rs. One Lakh be given to the petitioner no. 1 and Rs. One Lakh be given to the petitioner no. 2.

At this stage, learned advocate for the petitioners, on instructions from the petitioners who are present in the Courtroom, submitted that the petitioners are satisfied with the decision of this Court and they undertake to donate the amount of compensation to Shri Mirannath Maharaj Deosthan, Deoli.

The undertaking given by the petitioners is accepted. After getting the amount of compensation, the petitioners shall deposit it in the account of Shri Mirannath Maharaj Deosthan, Deoli by demand draft and file affidavit of compliance on record of this Court within 15 days of receiving the amount.

The prayer made by the petitioners for directions to the respondent no. 1 / State to conduct enquiry against the respondent nos. 5 and 6 is rejected, however, it is directed that entry of this judgment and directions to the respondent no. 5 - Dhananjay Sayare to pay compensation be taken in the service book of the respondent no. 5.

Rule is made absolute in the above terms. The respondent no. 5 shall pay Rs. Ten Thousand to each of the petitioner, towards costs. The amount of costs shall be paid till 30/01/2020.

Notice issued to Shri R.H. Deshmukh, Naib Tahsildar, Deoli, Dist. Wardha as per the order dated 10/12/2019 for initiating proceedings under the Contempt of Courts Act, 1971 is dropped in view of the report submitted by Collector, Wardha.