
(2012) 11 BOM CK 0046

In the Bombay High Court

Case No : Criminal Writ Petition No. 488 of 2012

Mohammad Ilyas

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2013) ALLMR(Cri) 173

Hon'ble Judges : P.V. Hardas, J;A.R. Joshi, J

Bench : Division Bench

Advocate : S.S. Sanyal, for the Appellant; T.A. Mirza, APP for the respondents 1 and 2, for the Respondent

Judgement

P.V. Hardas, J.—Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, this petition is heard finally at the stage of admission. By this petition under Article 226 of the Constitution of India, the petitioner prays for issuance of a writ of Mandamus for holding that the petitioner is innocent and has not done any "act" which attracts any penal provisions. The petitioner prays for restraining respondent no. 3 from abusing her powers and from harassing the petitioner by seeking his personal presence at Police Station, Sakkardhara. The petitioner also prays for restraining respondent no. 3 from calling the petitioner to the respondent no. 1 police station daily. The petitioner further prays for protecting the life and liberty of the petitioner and to transfer the investigation to another Police Station or Police Authority so that a fair investigation may be conducted. The petitioner also prays for directing respondents 1 and 2 to investigate the act of the vehicle bearing registration No. MH31/6242 in regard to the First Information Report registered with respondent no. 1 Police Station. The petitioner further prays for directing respondent no. 2 to conduct an enquiry against respondent no. 3 for her illegal acts and high handedness. The petitioner further prays for reprimanding respondent no. 3 for the illegal acts committed by her and for abusing her office by harassing the petitioner.

2. It appears that the case of the petitioner is that the petitioner was initially owner of a vehicle, bearing registration No. MH-31/6242, which according to the petitioner was sold by him on 17.8.2009 to a scrap dealer. It further appears that the vehicle is involved in an accident and a Report in that behalf had been filed at the Police Station. Accordingly, an offence has been registered under Sections 279 and 338 of the Indian Penal Code against an unknown person namely the driver of the vehicle. During the investigation of the said offence, according to the petitioner, he was repeatedly called to the Police Station and the petitioner in all fairness disclosed to the Investigating Officer that he had parted with the possession of the vehicle way back in the year 2009. The petitioner also cooperated with the Investigating Officer by bringing the scrap dealer from Amravati to Nagpur, who had purchased the vehicle from the petitioner. According to the petitioner, his statement as well as the statement of the scrap dealer was recorded. The petitioner has not produced document which according to law evidencing transfer of the vehicle. Be that as it may, the petitioner contends that even thereafter repeatedly he was summoned to the Police Station and the aforesaid procedure caused harassment to the petitioner. The petitioner has accordingly prayed for the reliefs to which we have adverted to above.

3. On notice being issued to the respondents, the respondents have filed their affidavit in reply and in that affidavit in reply the respondents contend that an offence has been registered by the police. Thereafter the petitioner was called at the Police Station on 19th September 2012 and was asked to produce documents of the vehicle. The petitioner had contended that he had parted with the possession of the vehicle but according to the respondents, the petitioner could not produce any documents evidencing transfer of ownership of the vehicle. The petitioner again attended the Police Station on 25th September 2012 along with scrap dealer, who is alleged to have purchased the vehicle. The petitioner even on that date did not produce the necessary documents. The respondents, therefore, contend in their affidavit in reply only on one occasion they had issued notice to the petitioner and the petitioner on his own had attended the Police Station on 25th September 2012 along with scrap dealer, who is alleged to have purchased the vehicle.

4. Learned APP further states on instructions that the presence of the petitioner in the Police Station is not at all necessary now in the light of fact that offence has been registered against unknown person. The presence of the petitioner would be necessary in the event an offence is registered against the petitioner. The learned APP, therefore, states that the petitioner would not be called to the Police Station for the purposes of enquiry/investigation unless and until an offence is registered against the petitioner. We accept the aforesaid statement as an undertaking to this Court. In respect of various reliefs that the petitioner states that the petitioner is innocent and has not done any act, which attracts any penal provisions cannot be granted at this stage as it would be subject matter of the trial in the event the petitioner is arrayed an accused. Moreover, the investigation is still incomplete. Similarly, no relief can be granted to the

petitioner as prayed in prayer clause (b) to the petition regarding restraining respondent no. 3 for alleged harassment to the petitioner in the light of statement which is made by learned APP which we have recorded earlier. Similarly, relief as prayed in prayer clause (c) cannot be granted in the light of the statement of learned APP. The relief in prayer clause (d) regarding transfer of the investigation to another Police Station, cannot be granted in the light of fact that the offence has been registered against unknown person and the investigation is at the very threshold. Since the question whether the petitioner has been called to the Police Station for causing harassment to the petitioner is a disputed question of fact, which we cannot issue any writ directing respondent no. 2 to conduct an enquiry against respondent no. 3. Moreover, for issuance of writ of Mandamus, there has to be demand and refusal and in the present case there is no demand for conducting an enquiry and consequently the relief as prayed for by the petitioner cannot be granted. It is not within the domain of this Court to reprimand respondent no. 3. We, therefore, partly allowed the petition to the limited extent making Rule absolute in view of the statement made by the learned APP. In the circumstances, there shall be no order as to costs.