

(2017) 04 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 4211 of 2016

Poonam Jaidev Shroff

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Citation : (2017) 2 AIRBomRCri 328 : (2017) 3 MhLJCrI 239

Hon'ble Judges : Ranjit More and Dr. Shalini Phansalkar-Joshi, JJ.

Bench : Division Bench

Advocate : Amit Desai, Senior Advocate with Pranav Badheka, Jainish Jain and Prashant Pawar i/b LJ Law, for the Petitioner; S.K. Shinde, PP with Ms. S.D. Shinde, APP, for the State; A.A. Kumbhakoni, Senior Advocate with Ravi Mishra, Advocates, for the Respondents No. 3.; Abad Ponda, Waseem Pangarkar i/b MZM Legal, for the Respondents No. 4.; A.P. Mundargi, Senior Advocate with Parvez Memon, Advocates, for the Respondents No. 5.

Final Decision : Dismissed

Judgement

Ranjit More, J.—The petition is filed for following reliefs :

(b) that this Hon'ble Court be please to issue a writ of mandamus or a writ in the nature of mandamus directing Khar Police Station to forthwith implement the order and directions dated 2nd September 2016 issued by the the State Government through the Addl. Chief Secretary (Home) (Exhibit- D hereto) and transfer the said cases viz (I) FIR No. 169 of 2016 registered on 4th April 2016 at the instance of Jaidev, (ii) the complaint dated 10th June 2016 filed by / MECR no 8 of 2016 registered at the instance of Kishore Chandiramani and (iii) the NC. No. 1836 of 2016 registered on 11th July 2016 at the instance of Kunwar Singh, all with Khar Police Station, Mumbai to Crime Branch, Unit IX, Mumbai;

(c) by an order and / or direction of this Hon'ble Court, the investigation of the said cases viz. (I) FIR No. 169 of 2016 registered on 4th April 2016 at the instance of Jaidev, (ii) the complaint dated 10th June 2016 filed by / MECR no 8 of 2016 registered at the instance of Kishore Chandiramani and (iii) the NC. No.

1836 of 2016 registered on 11th July 2016 at the instance of Kunwar Singh, all with Khar Police Station, Mumbai be transferred to the Crime Branch, Unit-IX and/or any other independent investigating agency as this Hon''ble Court may deem fit and proper.

(c-i) That this Hon''ble Court be pleased to quash and set aside the letter dated 29th November 2016 issued by the Addl. Chief Secretary (Home) (being Exhibit-L hereto);

(c-ii) Be pleased that the inquiry / investigation in the FIR No. 169 of 2016 by the Khar Police Station, Mumbai and the charge-sheet purportedly lodged on 2.12.2016 before the Incharge Additional Chief Metropolitan Magistrate's 32nd Court at Bandra, Mumbai is malafide, illegal, biased, false and bad in law and direct a fresh investigation by an independent agency viz. CBI or State CID or Crime Branch;

(c-iii) That this Hon''ble Court be pleased to direct that further investigation in the said three cases viz (I) FIR No. 169 of 2016 registered on 4th April 2016 at the instance of Jaidev, (ii) the complaint dated 10th June 2016 filed by / MECR no 8 of 2016 registered at the instance of Kishore Chandiramani and (iii) the NC. No. 1836 of 2016 registered on 11th July 2016 at the instance of Kunwar Singh, all with Khar Police Station, Mumbai be stayed;

(c-iv) Be pleased to quash and set aside the Non-bailable warrant issued against the Petitioner by the Ld. ACMM, 9th Court, Bandra, Mumbai on 15th December 2016 in CC No. 2248/PW/2016."

2. The facts giving rise to the present writ petition, in short, are as under :

Respondent No. 4 then a divorcee and the Petitioner then a spinster got married on 27th January 2005 in accordance with the provisions of Hindu Marriage Act, 1955. Respondent No. 4 had two children from the first marriage and from the present wedlock, the Petitioner and Respondent No. 4 have one daughter. It is the case of the Petitioner that after the solemnisation of their marriage, Respondent No. 4 started insulting the Petitioner and treated her with cruelty with regard to which the Petitioner has filed separate complaint. In October 2015, Respondent No.4 filed divorce petition under the provisions of Hindu Marriage Act, 1955. It is the case of the Petitioner that in order to mount pressure upon her to succumb to demand for consenting to divorce, Respondent No. 4 himself and through others have filed following complaints against her on the basis of false and frivolous allegations.

[1] At the instance of Respondent No. 4 FIR bearing CR. No. 169 of 2016 was registered by Khar Police Station against the Petitioner and one another for alleged offence punishable under sections 328, 504, 323 read with 34 of the Indian Penal Code, 1860.

[2] MECR No. 8 of 2016 is registered against the Petitioner for the offence punishable under sections 406 and 420 of the Indian Penal Code, 1860 in

pursuant of the order under section 156(3) of the Code of Criminal Procedure, 1973 made by Additional Chief Metropolitan Magistrate, 9th Court, Bandra at the instance of Kishor Chidiramani.

[3] At the instance of Umer Bahadur Rampersingh, non cognizable complaint bearing No. 1836 of 2016 is registered against the Petitioner on 22nd June 2016.

It is the case of the Petitioner that investigation into these cases is being carried out by Khar Police Station in malafide, partial and biased manner to help Respondent No. 4. She accordingly made complaints initially to the Commissioner of Police, Mumbai on 8th August 2016 and thereafter to the Chief Minister on 12th August 2016, requesting to transfer investigation of the said FIR / MECR from Khar Police Station to any other independent agency. The State Government through the Additional Chief Secretary, Home on 2nd September 2016 issued an order and direction, transferring the investigation into the said cases filed by Respondent No.4 to Crime Branch, Unit-IX. It was further directed that further complaints of the Petitioner be taken by Colaba Police Station. Despite this order of the Additional Chief Secretary, Home, the Petitioner contends that, investigation of the said cases are continued by Khar Police Station. Allegations are made against the Joint Commissioner of Police that despite several representations, nothing was done and the Petitioner was made to run from pillar to post. The Petitioner constrained to approach this Court by way of aforesaid writ petition for the reliefs stated hereinabove when she received letter from Khar Police Station that charge-sheet into CR No.169 of 2016 would be submitted before the concerned Magistrate on 3rd December 2016. At the time of first hearing of the writ petition, learned PP for the State placed on record direction / order dated 29th November 2016 whereunder Khar Police Station was directed to continue with the investigation of the said cases. The statement was also made that charge-sheet in CR No. 169 of 2016 is filed on 2nd December 2016. The Petitioner accordingly amended the writ petition and challenged those directions also.

3. Mr. Desai, the learned Senior Counsel appearing for the Petitioner took us through the aforesaid cases and submitted that investigation by Khar Police Station was being conducted in malafide, partial and biased manner. He submitted that despite the orders from the State Government transferring those cases to Crime Branch Unit-IX, Khar Police Station continued with the investigation and submitted charge-sheet in CR No. 169 of 2016. He submitted that the Petitioner submitted various representations and emails to various officers to implement the order dated 2nd September 2016, however, nothing was done and at the instance of the Joint Commissioner of Police, the Additional Chief Secretary, Home by fresh order directed Khar Police Station to continue with the investigation into the said cases. Mr. Desai submitted that there are no reasons recorded in the order dated 29th November 2016 as to why Khar Police Station was directed to continue with the investigation. Mr. Desai further submitted that order dated 29th November 2016 made by the Additional Chief

Secretary was received by Khar Police Station on 2nd December 2016 and on the very same day charge-sheet is filed in CR. No. 169 of 2016.

Mr. Desai further submitted that haste in which investigation was completed and charge-sheet was filed reveals malafide on the part of Khar Police Station and Respondent No. 4. He also submitted that registration of cases is the result of matrimonial disputes between the Petitioner and Respondent No. 4 and in such cases investigating agency must be slow in registering the offence, they are required to undertake preliminary enquiry and then and then only justified in registering the offence. Relying upon the Apex Court decision in *Lalita Kumari v. Govt. of UP.* [(2014) 2 SCC 1] , he submitted that Khar Police Station was very anxious to help Respondent No. 4.

Mr. Desai, the learned Senior Counsel appearing for the Petitioner relying upon the decision of the Apex Court in *Vinay Tyagi s. Irshad Ali* [(2013) 5 SCC 762], submitted that investigation can be transferred even at the instance of accused and the State Government was perfectly justified in the light of the Petitioner's allegations against Khar Police Station about malafide and partial investigation, to transfer the investigation to Crime Branch Unit-IX. He specifically stated that though in the writ petition the Petitioner has made serious allegations against Khar Police Station, Joint Commissioner of Police and Respondent No. 4 about the manner in which investigation of the said cases is conducted, no rebuttal affidavit is filed by the State Government. He submitted that investigation since inception being malafide, charge-sheet filed in CR. No. 169 of 2016 is required to be set aside and investigation of all cases should be given to Crime Branch Unit - IX. In this regard, he relied upon the decision of the Apex Court in *Gurubax Singh v. State of Punjab* [2016 SCC OnLine SC 457] decision of the Division Bench of this Court in *Balasaheb Bhagat v. State of Maharashtra* [2014 SCC OnLine Bom 1167] and decision of the Apex Court in *Gyan Chand v. State of Haryana* [1970(3) SCC 270].

4. Mr. Ponda, the learned Counsel appearing for the Respondent No. 4 vehemently opposed the petition. At the outset, he submitted that prayers made in the petition are not at all maintainable inasmuch as charge-sheet in CR No. 169 of 2016 is already filed and by judicial order cognizance is taken and process is also issued. He submitted that alleged illegality or irregularity in the investigation will not affect the power of learned Magistrate to take cognizance unless the Petitioner is shown to have caused prejudice. Mr. Ponda does not challenge the power of the High Court to transfer investigation even at the instance of accused. He, however, submitted that the State Government is not empowered to transfer investigation at the instance of accused. In this regard, he relied upon the decision of Division Bench of this Court (Aurangabad Bench) in Writ Petition no.481 of 2010, decided on 6th September 2010 and the decision of Allahabad High Court in *Azaz Ahmad v. State of UP.* [2014 SCC OnLine ALL 4188]. Mr. Ponda further submitted that the Petitioner wrongly assumed that by the order dated 2nd September 2016, the Additional Chief Secretary, Home had

transferred the investigation of the subject cases to Crime Branch Unit-IX. As a matter of fact, he submitted, under the said orders Commissioner of Police Mumbai / Joint Commissioner of Police was expected to pass further orders, which never came to be passed and therefore Khar Police Station was not at fault in continuing with the investigation of the said cases. Regarding objection of the Petitioner that the speed at which the FIR No. 169 of 2016 was registered and charge-sheet therein was filed, Mr. Ponda submitted that only after holding preliminary enquiry, this FIR came to be registered and after completion of investigation charge-sheet was filed. Mr. Ponda specifically denied the allegation of the Petitioner regarding partial and biased investigation at the hands of Khar Police Station. He lastly submitted that petition is devoid of any substance and same deserves to be dismissed.

5. Mr. Mundargi, the learned Senior Counsel appearing for the Respondent No. 5 submitted that initially Respondent No. 5 filed report / complaint with Khar Police Station, however, cognizance thereof was not taken. Therefore, Respondent No. 5 was constrained to file the proceedings under section 156 of the Code of Criminal Procedure, 1973 before learned Magistrate and only after passing of the orders under section 156(3), MECR No. 8 of 2016 is registered. He pointed out that the Petitioner in this MECR has not even moved for anticipatory bail application. He submitted that no allegations are made against Respondent No. 5 and therefore there are no reasons to transfer the investigation of this MECR.

6. Mr. Kumbhakoni, the learned Senior Counsel appearing for the Respondent No. 3 also opposed the petition. He adopted the arguments advanced by Mr. Ponda. He submitted that in the light of decision of Division Bench of this Court in Writ Petition No. 481 of 2010 (supra) and the decision of Allahabad High Court in Azaz Ahmad (supra), the State Government could not have issued directions to transfer the investigation.

7. Mr. Shinde, the learned PP placed on record for our perusal along with the report dated 16th December 2016 made by the Senior Inspector of Police, Khar Police Station, the internal correspondence between Khar Police Station and Dy. Commissioner of Police, Zone-IX. He submitted that though orders were passed by the Additional Chief Secretary on 2nd September 2016, no further orders were passed by the Commissioner of Police or Joint Commissioner of Police. The Senior Inspector of Police, Khar Police Station thereafter filed representation / office submission calling for the guidance from the higher authorities regarding transfer of investigation of subject cases. However this representation was dismissed and letter was issued. He submitted that Khar Police Station was justified in continuing with the investigation of CR. No. 169 of 2016 and in view of the subsequent letter dated 29th November 2016, Khar Police Station has filed charge-sheet in the said CR. He lastly submitted that no fault can be found with the conduct of Khar Police Station and therefore writ petition deserves to be dismissed and may be dismissed.

8. Having gone through writ petition, annexures thereto and reply given by

Respondent No. 4 and having considered the rival submissions of respective advocates, we do not find any merit in the Petitioner's allegation about malafide, partial and biased investigation by Khar Police Station.

On 4th April 2016, FIR bearing CR. No. 169 of 2016 was registered by Khar Police Station in respect of the incident dated 25th March 2016. Respondent No. 4 initially on 28th March 2016 filed report under section 154(1) of the Code in respect of the said incident alleging that the Petitioner made him to drink orange juice and after drinking juice, he felt drowsy and immediately slept into deep slumber. So far as MECR No. 8 of 2016 is concerned, Respondent No.5 initially approached Khar Police Station, however police did not register the offence. Therefore, Respondent No. 5 was constrained to approach the Additional Chief Metropolitan Magistrate, 9th Court, Bandra by way of private complaint and ultimately in pursuant of the orders made by learned Magistrate under section 156(3) of the Code, said MECR is registered. At the instance of Respondent No.3 Khar Police Station registered N.C. Case No. 1836 of 2016 in respect of incident dated 10th July 2016 under which it is alleged that the Petitioner assaulted Respondent No. 3.

9. The Petitioner alleged partial, biased and malafide investigation by Khar Police Station and approached the Commissioner of Police, Mumbai as well as the Chief Minister, Government of Maharashtra by written complaints to transfer investigation of the said cases from Khar Police Station to any other independent agency. The Additional Chief Secretary passed order / direction dated 2nd September 2016. This order is addressed to the Police Commissioner, Mumbai and copy of the same is marked to the Joint Commissioner of Police, Crime Branch, Mumbai, the Dy. Commissioner of Police, Zone-I, Mumbai and the Senior Inspector of police, Colaba Police Station, Mumbai. By this order / direction, the Commissioner of Police, Mumbai was directed to withdraw the investigation of the subject cases from Khar Police Station and transfer the same to any other Police Station within the jurisdiction of Mumbai police commissionerate or Crime Branch Unit-IX. It is further directed that since the office of the Petitioner is located at Colaba, in case the Petitioner needs to file any more FIR, the same can be registered in Colaba Police Station.

Two things are clear from this order dated 2nd September 2016 made by the Additional Chief Secretary. Firstly, it was addressed to the Commissioner of Police, Mumbai and copies of the same were given to the Joint Commissioner of Police, Crime, the Deputy Commissioner of Police, Zone-I and the Senior Inspector of Police, Colaba Police Station and secondly, the Commissioner of Police was directed to withdraw the investigation of the subject cases from Khar Police Station and transfer the same to any other Police Station within his jurisdiction or Crime Branch Unit-IX. In pursuance of this order, Commissioner of Police was expected to pass further orders regarding transfer of subject cases either to any other Police Station or Crime Branch, unit No.IX. Admittedly, Commissioner of Police, Mumbai has not passed further orders regarding transfer

of investigation of the subject cases nor any directions are issued in this regard by the Commissioner of Police to Khar Police Station. In the absence of further orders by Commissioner of Police or direction in this regard, Khar Police Station, in our considered view, was justified in continuing with the investigation of the subject cases. As a matter of law, Khar Police Station was under statutory duty to investigate those cases. They were not expected to stop investigation in the absence of order / direction to them by any Competent Authority. In our opinion, it is the Petitioner's misconception that by the order dated 2nd September 2016, investigation of the subject cases were transferred to Crime Branch Unit-IX. Mr. Desai, the learned Senior Counsel for the Petitioner in this regard relied upon several emails written to the Joint Commissioner of Police and others making grievance that Khar Police Station is continuing with the investigation of the subject cases. However, in our view in the above stated facts, no malafide can be alleged against Khar Police Station. In so far as the allegations against the Joint Commissioner of Police are concerned, the Petitioner has not impleaded him as party Respondent. We, therefore, without giving an opportunity to the Joint Commissioner cannot entertain these allegations.

10. Mr. Shinde, the learned PP has placed on record copies of internal office submissions / correspondence between Khar Police Station and their superiors. We have perused the same. On 6th October 2016, the Senior Inspector of Police of Khar Police Station made a submission and forwarded the same to his superior. In this submission, Senior Inspector of Police of Khar Police Station made reference to the order dated 2nd September 2016 made by the Additional Chief Secretary, Home. It was stated that under this order directions are given to Police Commissioner to transfer the investigation of the subject cases to any other Police Station or Crime branch, Unit-IX. The Senior Inspector of Police, Khar Police Station solicited from his superiors the appropriate orders. On 7th October 2016, Assistant Commissioner of Police, Bandra Division made endorsement on this submission that appropriate orders may be passed. On the very same day, file was placed before the Dy. Commissioner of Police, who made endorsement that appropriate orders may be passed by the superior officers. File was then placed before the Joint Commissioner of Police on 16th November 2016 however he dismissed the submission and directed to issue letter in this regard.

11. On 10th November 2016, Joint Commissioner of Police wrote a letter to the Additional Chief Secretary, Home. For ready reference the letter is reproduced.

"To,

Additional Chief Secretary (Home),

Government of Maharashtra,

Mumbai.

Sub :- Transfer of cases registered against

Smt. Poonam Shroff.

Ref :- No. MIS 2016/F.No.271/Pol-aa, Home Department,
Mantralaya, Mumbai 32. dated 02/09/2016.

Sir,

Apropos the subject and reference mentioned above, it is submitted that the offence vide M.E.C.R. No. 8 of 2016 u/sec. 406, 420 IPC of Khar Police Station has been registered against Smt. Poonam Shroff as per the order issued u/sec. 156(3) of Cr.P.C. by Metropolitan Magistrate, 9th Court, Bandra, Mumbai. Hence, investigation of the same cannot be transferred to any other Police Station without permission of the Court. Moreover, investigation in the case is almost complete.

Another case against Smt. Shroff registered vide C.R.No. 169/2016 U/Sec 328, 323, 506, 34 IPC of Khar Police Station is also in the final stage of investigation.

The third case registered against Smt. Shroff is a Noncognizable offence vide N.C. No. 1836/2016 of Khar Police Station. Being a non-cognizable case, the Police Station has moved to the Court seeking permission to conduct investigation in it.

In light of the circumstances mentioned above, it is requested that investigation in all the three cases registered against Smt. Poonam Shroff be retained with Khar Police Station Mumbai.

Submitted for kind information and necessary orders."

The letter shows that request was made by the Joint Commissioner of Police to the Additional Chief Secretary, Home to let Khar Police Station to continue with the investigation of the subject cases.

12. In response to this letter, the Additional Chief Secretary Home passed fresh orders / directions dated 29th November 2016. By this letter, Additional Chief Secretary directed investigation of the subject cases be retained with Khar Police Station. For ready reference, English translation of the letter dated 29th November 2016 is reproduced hereinbelow :

"To,

the Commissioner of Police,

Mumbai.

Sub : FIR No. 169/16 recorded at Khar Police Station in the matter Smt. Poonam Shroff, Complainant Mr. Kishor Chandaramani and transferring the investigation of MC and MCR No. 7 of 2016 to other Police Station in the police Commissioner Jurisdiction filed by Mr. Kuvar Singh.

Mr. Kishor Chandaramani of United Phosphorous Limited has filed a complaint on 10/6/2016 for criminal breach of trust against Smt. Shroff. Further, Mr. Kuvar

Singh Driver has filed NC No. 18637/2016 on 11/7/2016 for alleged assault and abuse against Smt. Poonam Shroff. In this matter directions were given to Police Commissioner Mumbai for transferring the said complaint and FIR to other Police Station or Mumbai police Crime Branch Unit No.9 on 2/9/2016 vide Government letter.

However, joint police Commissioner (L&O) by his letter dated 10/11/2016 expressed his views that investigation of CR. No. 169 of 2016 under section 328, 323, 506, 34 IPC registered against Smt. Shroff is at final stage of investigation. Investigation of MECR of 7/2016 is nearly completed. In addition to this in this matter as per orders of the Court FIR is recorded hence without the prior permission of the Hon"ble Court it will not be appropriate to transfer the case to other police station or other unit. Further it is informed that permission of the Hon"ble Court is being obtained for transferring the investigation of non-cognizable crime No. 1836/2016 filed against Smt. Shroff and have requested for further directions.

By taking into account the present circumstances explained by Joint Commissioner of Police (L&O), the investigation of the said matter be retained with Khar police station."

13. Thus, it is clear that by the initial order dated 2nd September 2016, the Additional Chief Secretary directed the Commissioner of Police to withdraw the investigation of the subject cases from Khar Police Station and transfer the same to any other Police Station or Crime Branch Unit-9. However, admittedly, Commissioner of Police Mumbai has not passed any further directions. The Senior Inspector of Police of Khar Police Station from time and again made request to the higher authorities seeking guidance. But he did not receive any guidance. Khar Police Station was duty bound to continue with the investigation of the subject cases. At the latter stage, for the reasons stated in the letter dated 10th November 2016, the Joint Commissioner of Police requested the Additional Chief Secretary, Home to continue the investigation of the subject cases with Khar Police Station and at the request of Joint Commissioner of Police, Additional Chief Secretary, continued the investigation of the subject cases with Khar Police Station. In effect, Additional Chief Secretary, Home has withdrawn his earlier order dated 2nd September 2016.

14. Mr. Desai, the learned Senior Counsel for the Petitioner challenged the order dated 29th November 2016 made by the Additional Chief Secretary (Home) on the ground that order is not supported by any reasons. We do not find any merit in this contention. Perusal of the order dated 29th November 2016 makes it abundantly clear that the Additional Chief Secretary was pleased to continue the investigation of the subject cases with Khar Police Station for the reasons stated therein, namely, investigation into CR. No. 169 of 2016 registered against the Petitioner is at final stage; investigation of MECR No. 8 of 2016 is nearly completed. In addition to this, MECR is registered as per the orders of the Court and without prior permission of the learned Magistrate it would not be

appropriate to transfer the investigation of MECR to any other Police Station.

15. Mr. Ponda, the learned Counsel for the Respondent No.4 challenged the authority of the Government to transfer investigation of the subject cases at the instance of the Petitioner who is accused in those cases. Mr. Desai relying upon the decision of the Apex Court in Tyagi's case contended that investigation can be transferred even at the instance of accused. Mr. Ponda does not dispute the proposition of law laid down by the Apex Court in Tyagi's case. He states that High Court in exercise of jurisdiction under Article 226 of the Constitution of India, can direct transfer of investigation of crime, however, the State Government has no power to transfer the investigation at the instance of accused. He relied upon the decision of this Court in Writ Petition 481 of 2010 (supra) and decision of Allahabad High Court in Azaz Ahmad (supra). The question which fell for consideration before the Division Bench of this Court in Criminal Writ Petition No. 481 of 2010 was whether the Superintendent of Police was authorised in law to transfer the investigation from one the Investigating Officer and entrust it to another Investigating Officer at the behest of the accused. The Division Bench relied upon the decision of the Apex Court in CBI v. Rajesh Gandhi [1997 AIR (SC) 93] and observed that learned PP was unable to point out any provision of law under which the Superintendent of police was entrusted with powers to do so. The Division Bench then held that assuming for the sake of argument that the superintendent of police did have the powers to transfer the investigation from one Investigating Officer to another, the sole question remains is whether it could be done so at the behest of the accused. An accused certainly cannot pick and choose an investigating officer of his choice nor can he claim that the Investigating Officer who is entrusted with the investigation is biased.

The Division Bench of Allahabad high Court in Azaz Ahmad (supra) held that transfer of investigation at the behest of accused person is indirect violation of the ratio laid down by the Apex Court in CBI v. Rajesh Gandhi (supra). The ratio of the decisions of this Court and Allahabad High Court is squarely applicable to the facts and circumstances of the present case. We are of the opinion that in the light of said ratio, the Additional Chief Secretary could not have transferred the investigation of the subject cases at the instance of the Petitioner who is accused in the said cases. In any case, this issue does not require further deliberation as the initial order dated 2nd September 2016 transferring the investigation of the subject cases was subsequently withdrawn by another order dated 29th November 2016.

16. This takes us to deal with the submission of Mr. Desai regarding haste in which CR No. 169 of 2016 was registered and charge-sheet is filed. Mr. Desai submitted that dispute between the parties essentially being matrimonial dispute, FIR ought not to have been registered and according to him charge-sheet is filed expeditiously. We do not find any substance in the submission of Mr. Desai. As stated above, FIR No. 169 of 2016 is registered on 4th April 2016 in

respect of the incident dated 25th March 2016. In respect of this incident, Respondent No. 4 had already given report to Khar Police Station under section 154(1) on 28th March 2016. Khar Police Station did not register the offence immediately on 28th March 2016 however they waited till 4th April 2016. In the meanwhile for the period of 7 days, it appears that Khar Police Station made preliminary enquiry and after finding substance in the allegation of Respondent No.4 registered the offence. Khar Police Station, in our opinion, therefore followed the guidelines issued by the Apex Court in Lalita Kumari. As stated above though initial order of the Additional Chief Secretary transferring the investigation of the same CR was passed on 2nd September 2016 however further orders were not issued by the Commissioner of Police, Mumbai. In fact it was statutory duty of Khar Police Station to continue with the investigation of the subject cases. In this regard, Khar Police Station also made efforts to obtain appropriate response from the higher authorities, but could not get and therefore they had completed investigation and charge-sheet was filed on 2nd December 2016. Thus, Khar Police Station took nearly about 8 months to investigate the said CR. By no stretch of imagination it could be said that Khar Police Station filed the charge-sheet in haste. At this stage, it is also required to be noted that Respondent No. 5 initially tried to file report under section 154(1) of the Code, however Khar Police Station did not register the offence. Ultimately, he was constrained to approach learned Magistrate and obtain orders under section 156(3) of the Code. Only thereafter, Khar Police Station registered MECR No. 8 of 2016. Had Khar Police Station been partial to Respondent No. 4, and biased against the Petitioner they would have registered the FIR immediately at the instance of Respondent No. 5 and 4. That apart though in this MECR the Petitioner had not applied for anticipatory bail, Khar Police Station have not arrested her. We therefore do not find any merit in the Petitioner's allegation that investigation carried out by Khar Police Station was biased, partial or mala fide. It is also required to be noted that learned Magistrate has taken cognizance of the charge in CR No. 169 of 2016 and process is also issued. The Petitioners have not challenged these orders. In any case irregularity in investigation would not affect the power of the learned Magistrate to take cognizance unless it is shown to have caused prejudice to the Petitioner.

17. Reference must also be made to the decisions relied upon by Mr. Desai, namely, the Apex Court decisions in Gurbax Singh (supra) and Gyan Chand (supra) and decision of this Court in Balasaheb (supra), to contend that in the absence of rebuttal affidavit by the State, allegations made in the writ petition against Khar Police Station, the Commissioner of Police and the Joint Commissioner of Police deserve to be accepted. The submission of Mr. Desai in this regard, in our considered opinion does not hold water in the facts and circumstances of the present case. It is true that State has not filed rebuttal affidavit. However, learned APP has placed on record for our perusal the report dated 16th December 2016 and file containing internal correspondence / office submissions between Khar Police Station and their superiors. Having perused the

internal correspondence, we have already found that Khar Police Station did their best to get guidance from the superiors, but they did not receive guidance and in the absence of such guidance they were justified in continuing with the investigation of the subject cases. That apart, we also found that as a matter of fact there are no directions to Khar Police Station to transfer investigation of the subject cases. Directions were issued by the Additional Chief Secretary, Home to the Commissioner of Police and the Commissioner of Police was expected to act further, however he did not issue further orders and in the meanwhile, Additional Chief Secretary, Home withdrew his earlier order. It is true that in this regard the Petitioner has also made allegations against the Commissioner of Police and the Joint Commissioner of Police, however, they were not impleaded as party Respondents in this writ petition. In their absence, we cannot go into those allegations.

18. Before parting with the matter, we must deal with the argument of Mr. Desai regarding the manner in which chargesheet in CR No.169 of 2016 was filed, cognizance thereof was taken, process and non-bailable warrant was issued. When the petition was placed before this Court on 6th December 2016, learned APP for the State placed on record communication dated 29th November 2016 from the Additional Chief Secretary, Home wherein Khar Police Station was directed to continue with the investigation of the subject cases. Learned APP also made a statement that charge-sheet was filed before the concerned Magistrate on 2nd December 2016, however, cognizance was not taken and matter was adjourned to 10th February 2017. We recorded the statements of learned APP and adjourned the matter to 21st December 2016 and directed the concerned Magistrate not to take cognizance of charge-sheet in CR. No. 169 of 2016 filed by Khar Police Station. On 7th December 2016, Mr. Desai mentioned this matter for urgent circulation as it was found that cognizance of the charge-sheet in CR. No. 169 of 2016 was taken by the Magistrate on 2nd December 2016 itself. We accordingly granted circulation for 13th December 2016. On 13th December 2016 we found that cognizance of the said chargesheet is already taken by the concerned Magistrate on 2nd December 2016. We also found that date of criminal case bearing No.2248/PW/2016 arising from charge-sheet in CR. No. 169 of 2016 was preponed to 15th December 2016 from 10th February 2017. In the circumstances, we directed Registrar (Judicial) of this Court to call for the original record and proceedings of C.C.No.2248/PW/2016 from the Court of concerned Magistrate and adjourned the writ petition to 21st December 2016. The Petitioner again moved the writ petition before us on 16th December 2016 and mentioned that despite the order dated 13th December 2016 calling for the record and proceedings, the Magistrate has issued non-bailable warrant against the Petitioner on 15th December 2016. It was alleged that concerned Magistrate issued non-bailable warrant without issuing process which was contrary to the decision of the Apex Court in *Inder Mohan Goswami v. State of Uttaranchal* [(2007) 12 SCC 1]. In the light of these facts, we directed Registrar (Judicial) to undertake enquiry and submit a report and we also stayed non-bailable warrant

issued by the Magistrate against the Petitioner. In pursuance of this order, Registrar (Judicial) has held enquiry and submitted his report in a sealed cover.

19. We have perused the original record and proceedings of C.C. No. 2248/PW/2016 as well as the report submitted by the Registrar (Judicial). The report shows that the order dated 6th December 2016 has not been communicated to learned Magistrate. The order dated 13th December 2016 was communicated on 15th December 2016 through special messenger vide dispatch writ. Report of the Peon Waghmare (Dispatch Messenger) shows that he reached in the office of the Additional Chief Metropolitan Magistrate, 9th Court, Bandra at 7.30 p.m. on 15th December 2016. The report further shows that the order dated 16th December 2016 was communicated to the Magistrate on 30th December 2016.

20. The record shows that on 2nd December 2016, the Additional Chief Metropolitan Magistrate, Bandra was on leave and therefore charge-sheet was filed before the in-charge magistrate, i.e., learned Metropolitan Magistrate, 32nd Court. The report further shows that on the very same day, cognizance was taken and process was issued and case was adjourned to 10th February 2017, however, this date "10th February 2017" is encircled and another date of "15th December 2016" is mentioned to its right side without counter signature confirming the correction. Prima facie it appears that date has been changed from 10th February 2017 to 15th December 2016. Who has changed this date is not clear from the record.

21. Mr. Desai also alleged that when the matter was fixed at 2.45 p.m. on 15th December 2016 it was abruptly taken at 11.00 a.m. and non-bailable warrant is issued by the additional Chief Metropolitan Magistrate, 9th Court, Bandra. The report in this regard shows that Criminal Case No. 2248/PW/2016 was listed at serial No. 60 and there was no mention on the board that it will be taken up at 2.45 p.m.. This observation is made in view of the fact that in respect of the matters which were kept at 2.45, there was specific mention thereof on the board, such as matter at serial Nos. 52 to 56 there is caption "case at 2.45 p.m." and matter at serial No. 57 "for argument at 2.45 p.m.". The record and report further show that summons was not actually prepared and issued for execution in pursuance of issue process order dated 2nd December 2016. However, on 15th December 2016 non-bailable warrant is issued against the accused.

22. From the above facts, prima facie it appears that date 10th February 2017 given in criminal case No. 2248/PW/2016 was preponed to 15th December 2016. Who has preponed this date is not clear. Whether this was preponed by the concerned Magistrate or ministerial staff is not clear from the record. It is also clear that though issue process order was passed, summons was not actually prepared and issued for execution and instead non-bailable warrant is issued against the accused on 15th December 2016. Therefore, in the light of decision of the Apex Court in Inder Mohan (supra), non-bailable warrant cannot sustain and deserves to be quashed and set aside which was issued without issuing summons and accordingly the same is quashed and set aside.

23. Additional Chief Metropolitan Magistrate, 9th Court, Bandra is directed to proceed further in CC No. 2248/PW/2016 in accordance with law from the stage of issue summons and thereafter deal with the case in accordance with law. Since order dated 2nd September 2016 is withdrawn by the Additional Chief Secretary, Home which we have upheld, Khar Police Station is directed to proceed further with the investigation of MECR No. 8 of 2016 and NC No. 1836 of 2016 in accordance with law. Stay granted earlier in this regard stands vacated. Registry is directed to forthwith send back the record and proceedings of CC No.2248/PW/2016 to the concerned Magistrate's Court. Registrar (Judicial) is directed to place the papers before the Hon'ble the Chief Justice for taking appropriate action against the concerned persons in respect of lapses discussed in Paragraph No. 20 and 22 above.

24. At this stage, learned Counsel appearing for the Petitioner seeks continuation of the interim protection granted earlier. We are not inclined to continue the said protection order inasmuch as so far CR No. 169 of 2016 is concerned, charge-sheet is already filed and the Petitioner is on anticipatory bail. So far as MECR 8 of 2016 is concerned, the Petitioner has not even applied for anticipatory bail. So far as NC case proceeding is concerned, Khar Police Station has applied under section 155 of the Cr.P.C. for permission to undertake investigation and yet such permission is not granted. In these circumstances, prayer is rejected.