

(2004) 01 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 1647 of 2000

Sudhir M. Vora

APPELLANT

Vs

Commissioner of Police for Greater Bombay, API Bhargode,
Addl. Commissioner of Police, North Zone and The State of
Maharashtra

RESPONDENT

Date of Decision : 16-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156, 157
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) CriLJ 2278

Hon'ble Judges : J.G. Chitre, J;A.M. Khanwilkar, J

Bench : Division Bench

**Advocate : S.V. Marwadi, for the Appellant; Pravin Singhal, Assistant Public
Prosecutor, for the Respondent**

Final Decision : Allowed

Judgement

Khanwilkar, J.—This writ petition under Article 226 of the Constitution of India, is filed for direction to the respondent No. 1 to take suitable action against respondents No. 2 and his associates in respect of the subject matter stated in the complaint of the petitioner dated 22.11,2000.

2. Briefly stated, the petitioner is a practising Chartered Accountant. He came in acquaintance with one K.A. Rashid and Smt. Sitabai Govind Joshi. The petitioner facilitated the said persons to conclude some transaction regarding land. However, later on said K.A. Rashid started blaming the petitioner for the said deal and called upon the petitioner to pay him Rs. 4.50 lakhs. As the petitioner denied his liability to pay that amount, the petitioner was threatened by the said K.A. Rashid and his wife that they would take the assistance of local police officers. The petitioner asserts that the petitioner was picked up from his office at 10.45 a.m. on 14.11.2000 by plain clothes police constables of the Bandra Police Station at the behest of said K.A. Rashid. The petitioner was told that respondent

No. 2 who is Assistant Police Inspector of Bandra Police Station had called him urgently. NO cause was disclosed to the petitioner. The petition then graphically explains the events that unfolded after the petitioner reached the police station, which ultimately led to the issuance of five cheques in the name of the said Shri K.A. Rashid, totalling Rs. 4.50 lakhs. The petitioner was allowed to leave the police station only after the petitioner had made over said five cheques totalling Rs. 4.50 lakhs to K.A. Rashid. It is stated that the petitioner was forced to remain in police station for almost four hours and had to suffer humiliation, torture and threats as stated in the writ petition. The petitioner was terribly disturbed with the said experience. Apprehending further trouble, the petitioner immediately took up the matter with the Commissioner of Police for Greater Bombay, by his complaint in writing dated November 22, 2000. In this complaint, all the events that unfolded till the making of the said complaint about the manner in which the petitioner was picked up from his office and handled till he was allowed to leave the police station, have been mentioned, we think it apposite to advert to the relevant extract of the said complaint from paras 7 to para 18, which reads, thus:

"7. On the 14th November 2000, when I was doing auditing of my corporate clients accounts as the last date of filing of income tax returns was approaching fast i.e. 30.11.2000, at around 10.45 a.m. Mr. K.A. Rashid an old friend of mine residing at Lokhandwala Complex, walked in my office, along with two plain clothes police constables from Bandra Police Station and asked me to accompany them to the Bandra Police Station there and then itself, I asked them to sit down and tell me what was all this about. They told me that Mr. Bhargode, API of Bandra Police Station had called me urgently to see him. I told them to proceed to the Police Station and I shall reach there in next ten fifteen minutes as I had to instruct my staff about that day's schedule. They said nothing doing. I will have to come along with them leaving all my work standstill immediately. They took me to Bandra Police Station walking with two Constables on my either side.

8. As soon as we reached Bandra Police Station, I was asked to sit on the Bench in Mr. Bhargode's cabin as he was not present. Mr. Rashid sat on the chair opposite Mr. Bhargode's table. In or around ten fifteen minutes, one Mr. Rajesh Kamble entered Mr. Bhargode's cabin in plain clothes and asked me what was the problem of Mr. Rashid with me. He talked to me for about 20-25 minutes threatening me to repay the money which I was supposed to have taken from Mr. Rashid or face dire consequences of C.R. having filed against me, not only at Bandra Police Station but also ten twelve other fake C.R.s. shall be filed in other police stations of Mumbai. I tried to convince him that I had not taken any money from Mr. Rashid but he himself had invested the said money in a plot of land at Sarasole Village Nerul, New Bombay through a friend of mine one Mr. Ashwin Thakker who is a Chartered Accountant having office at Vashi. Mr. Rajesh Kamble kept on abusing me in filthy language and kept on repeating that there are three more complaints filed against me in Bandra Police Station. He also accused me that I am a cheater and had eaten up the money of Mr. Rashid. He

insisted that I should return the money of Mr. Rashid who was an NRI earlier, and has lost a large amount of money in the stock market. He also accused me that because of me, Mr. Rashid's relation with his wife and children have been strained and that he might commit suicide and was in a great need of his money.

9. After twenty-twenty five minutes, another Police Officer came and sat on the chair of Mr. Bhargode and started abusing me left and right. I could not get his name but surely I will be able to identify him on seeing him in person or his photograph. He also insisted that I have eaten up Mr. Rashid's money and I should be beaten up like other criminals after removing my clothes. He demanded of me to repay Mr. Rashid's money in 24 hours time or else I will be put behind bars.

10. Then at around 12-12.15 p.m., Mr. Bhargode walked in his cabin like a big lord and sat on his chair which the previous police officer immediately vacated. As soon as he saw me sitting on the bench in front of his table, he asked my name. I replied to him that I am Sudhir Vora and that I have been summoned to your office by Mr. Rashid along with two plain-clothes policemen to see you. He started shouting on me that who told you to sit and angrily ordered me to stand up immediately, I had to stand up as per his wish. He also started abusing me and called me a cheater, a rogue of the society and that at least three to six complaints have been filed against me in the Bandra Police Station. He told me that the policemen of Bandra Police Station as has been observing my activities for the last two three months because of the above Complaints and of Mr. Rashid, who is a thorough gentlemen. He insisted that if I pay up Mr. Rashid's money which he had invested to buy the said plot of land at Sarsole Village, Nerul, New Bombay, I shall be able to go back to my office or otherwise, to the lock-up. On my trying to argue with him that I had not taken the money and that Mr. Rashid had paid the money in the name of the owner of the plot who had sold the same to Mr. Rashid, Mr. Bhargode asked me to go to behind the partition in his office and asked other constables present there to prepare a CR and take me on remand. One of the Constables started preparing the CR and asked me various details of myself and my family. On the clause of writing any identification mark, I told that I do not have any such mark on my face, Mr. Rajesh Kamble asked me to remove my shirt for the same.

11. In the meanwhile, other police men kept on prompting me that I should seek pardon from Mr. Bhargode and Mr. Rashid and pay up his amount and get rid of all this. I was made to stand for more than 2 hours in front of Mr. Bhargode listening to all their bad words, abuses and threatening statements about my career being ruined. They also threatened me to visit my house at 2.30/3,00 a.m. in the morning and harass and trouble me till the time I pay up Mr. Rashid's money. Mr. Bhargode also took down my office and residence address along with telephone Nos. in his diary. I requested umpteen number of times to Mr. Bhargode to please give me 2/3 months time to use my good offices to convince Mr. Ashwin Thakker/Mr. Bhagat to resolve Mr. Rashid's plot problem at New

Bombay, though. I had no responsibility for the same. I also insisted that the original agreement for the purchase of the said plot was prepared by a renowned advocate Mr. M.T. Thakker of Vashi between Mr. K.A. Rashid as purchaser and Smt. Sitabai Govind Joshi and the same is with Mr. Rashid and that he should go to the court against the seller for not giving him a clear title of the said plot. Whenever I used to open my mouth, I used to get abuses or scolding from any one of the policemen in the cabin and they did not allow me to say my side of the story. Never in my life of 38 years, I have faced such a grave situation and got very nervous and confused. I pleaded with Mr. Rashid also that I will use my good offices to intervene in the matter and see if I could get the problem solved as soon as possible and he being an old friend of mine. I kept on requesting him to tell Mr. Bhargode to stop torturing me. But he also insisted that now the ball is in Mr. Bhargode's court and hence he shall abide by Mr. Bhargode's decision when I told Mr. Bhargode that I shall not be able to pay Mr. Rashid's amount today itself, or within 24 hours, he threatened me with dire consequences including imprisonment and third degree treatment.

12. In the meanwhile, other constables got two petty criminals in the back side of Mr. Bhargode's cabin and started beating them miserably. Mr. Bhargode told me that if I do not pay up Mr. Rashid today itself, I shall be treated like other criminals and taken on remand.

13. I was carrying my mobile phone with me in the pocket. When I received two or three phone calls on the same, I was not allowed to answer them nor be used to call help/advice from my Advocates.

14. At around 1.30 p.m. a person from my staff Mr. Pravin Pawar came to the police station inquiring about my whereabouts. On seeing him Mr. Rashid told Mr. Bhargode that he has come to help his boss. So Mr. Bhargode asked my man also to come in the cabin and started asking him questions about my business and that I am a big and renowned cheater and that he shall also be jailed along with me.

15. My man Mr. Pravin Pawar was told by Mr. Rashid and Mr. Rajesh Kamble to get my cheque book from the office and come back soon to the police station and I was told to sign the cheques in favour of Mr. Rashid. However, Mr. Rashid was asking for Rs. 13 lakhs as his amount due along with interest etc. On seeing all this type of treatment to a learned person and to a law-abiding citizen of this country, I was forcibly and under threat of being put behind bars, made to issue post-dated cheques of Rs. 4.50 lakhs to Mr. Rashid.

16. Mr. Bhargode compelled me to issue cheques of Rs. 4.50 lakhs. I informed him that I do not have any such amount in my Bank Account. He asked for post-dated cheques. Under the said threat of unlawful imprisonment, torture, man handling, humiliation and intimidating I was compelled to sign five cheques in name of Mr. K.A. Rashid totalling Rs. 4.50 lakhs. Mr. Bhargode asked me to hand over the said post-dated cheques in his presence to Mr. Rashid. He also give me

a warning that I should see to it that the said cheques given to the Mr. Rashid clears on the date of issue and to report him about the clearances of the cheques by coming to the Police Station personally. After handing over the cheques and also after receiving some more abuses, I was allowed to go back to my office at around 3.00 p.m.

17. In the premises, I had no alternative but to leave all these things and returned to my office. From that day till today, I am still under dreadful fear that if I stop the payment, there will be some attack on me and my family members and I will be implicated in false cases as threatened by the officer and Mr. Rashid. I have informed about this incident to my parents and other relatives and friends but looking to the atrocity with which I have met, they advised me that if I do any complaining against the police, the consequences will be serious. I have been mentally and physically ill and incapable to attend to my work since then. However, now ultimately I have decided that since I have not committed any offence and since I was also not responsible for the loss of money of Mr. Rashid and since I do not owe him any money, I will stop payment on the cheques. The cheques taken by them are in my handwriting and now I have informed the Bank to stop the payment of the said cheques.

18. From the events that took place on the 14th November, 2000, it is crystal clear that now the police are acting as recovery agents and they want to recover Rs. 4.50 lakhs from me which is not due from me. The conduct of the Officers kept me under terror for the last one week and that I could not attend to my office or do my clients work. I am also afraid that thereafter I give this complaint to you, there is every likelihood of my arrest in a false case or there is every likelihood that they will prepare a false complaint now of Mr. Rashid and they will involve me in a case under cheating. I also know now that the purpose of all this was to obtain post dated cheques so that I could be prosecuted u/s 138 of the Negotiable Instruments Act. May I therefore request you to kindly make a detailed inquiry and give me protection from the officers of Bandra Police Station and/or Mr. Rashid who are bent upon to involve me in a false case."

3. It is not in dispute that this communication was received, in the Office of respondent No. 1 on 23.11.2000. As the petitioner did not receive any response from respondent No. 1, he rushed to this Court by way of the present writ petition on 27.11.2000, praying for the following reliefs:

"(a) Rule be issued and Respondent No. 1 be called upon to produce the papers of enquiry with regard to the complaint of the Petitioner dated 23.11.2000.

(b) By issuing a proper writ, order or direction under Article 226 of the Constitution of India, the enquiry into the complaint of the petitioner dated 22.11.2000 made to Respondent No. 1 be directed and suitable action be initiated against the Respondent No. 2 and his associates.

(c) Pending the hearing and final disposal of this petition, the Respondent No. 2 be directed not to arrest the petitioner in the complaint of the said Shri K.A.

Rashid in respect of sale of land and plot No. 208 situated at Village Sarsole, Nerul, New Bombay.

(d) For such other and further reliefs as may be deemed just, fit and proper."

4. This writ petition was circulated for admission on December 4, 2000 when the learned Assistant Public Prosecutor, appearing for the respondents, prayed for time to file affidavit-in-reply. On that day, according to the petitioner, relief in terms of prayer Clause (c) was prayed for. But as the matter was being adjourned at the instance of the learned A.P.P., the Court orally mentioned to the learned A.P.P. not to precipitate the matter. This stand taken by the petitioner is however, denied by the respondents. We shall make reference to this aspect a little later. The matter was once again listed on 11.12.2000, when the following order came to be passed :

"Leave to amend. Ld. A.P.P. sought adjournment for a week stating before us that affidavit-in-reply would be filed on behalf of respondent No. 1 as also on behalf of the concerned authorities to whomsoever the petitioner has lodged the complaints so far including the complaint dated 24th November, 2000. Post this matter on Tuesday the 19th Dec. 2000."

On 11th December, 2000, affidavit of Dattatray Pandurang Bhargude. respondent No. 2 came to be tendered which was taken on record, at page 3s. The matter was posted on 19.12.2000, when the following order came to be passed :

"The learned A.P.P. sought time for explaining as to why the affidavit in reply could not be filed on behalf of the other concerned authorities mainly Deputy Commissioner of Police, Zone VII. Bombay as contemplated by order dated 11.12.2000 so also for filing the affidavit in reply on his behalf. Accepting the request, we adjourn the hearing on 21.12.2000."

The matter was then posted on 21.12.2000, on which date, the affidavit of Mr. Rajender Singh, I.P.S. Deputy Commissioner of Police, attached to Zone VII, Greater Bombay was tendered, which was taken on record at page 59. In the meantime, however, the petitioner also filed his rejoinder in response to the affidavit of respondent No. 2 sworn on 12.12.2000 at page 43 onwards. On 21.12.2000, the Court noted that the affidavit filed by Rajender Singh, Dy. Commissioner of Police, offered no explanation as to why the affidavit as ordered, could not be filed in time. The Court made the following order :

"Perused the affidavit dated 20.12.2000 filed by Rajendra Singh, Deputy Commissioner of Police. In the said affidavit there is no explanation as to why he was not in a position to give instruction to A.P.P. from 14th December onwards till 19th December 2000 when the matter was listed before us.

The learned APP therefore made a request that the matter may be adjourned to 22nd December, 2000 so that necessary affidavit will be filed in this regard as well.

At the request of the learned APP we adjourn the hearing of this matter till tomorrow. Post it on 22nd December, 2000."

Accordingly, the matter was posted on 22.12.2000 when the said Officer filed further affidavit which is at page 65, explaining the reasons as to what prevented him from filing the reply affidavit in time. The petitioner, thereafter, filed rejoinder sworn on January, 2001 which is at page 71, reiterating the assertions made and further placing on record that inspite of the oral directions given by the Court, the Police Officers caused arrest of the petitioner in connection with the same offence complained by K.A. Rashid and notwithstanding the assurance given on affidavit dated 8.12.2000 by respondent No. 2 that only if a fresh complaint is given by Mr. K.A. Rashid and his wife, necessary action will be taken according to the provisions of law. It is stated in this affidavit that no fresh complaint was given by K.A. Rashid but inspite of that the petitioner came to be arrested. Not only that, the petitioner was handcuffed, manhandled, paraded and humiliated while producing before the concerned Magistrate. Moreover, the petitioner was pressurised by the concerned Officer of Bandra Police Station to withdraw the pending writ petition or else face the consequences. Along with this affidavit, the petitioner also placed on record the order passed by the Magistrate releasing the petitioner on bail, who, in turn has recorded prima facie opinion that the petitioner has been booked in the alleged offence to subserve the ulterior design. We shall refer to this aspect little later. Accordingly, after the Winter Vacation, the matter was listed on January 15, 2001, when the Counsel for the petitioner made grievance before this Court that the police had arrested the petitioner inspite of the direction given by the Court to refrain from doing so. On January 16, 2001, the Court passed the following Order :

"Leave to Amend. It is submitted by Counsel for the Petitioner Mr. Mundargi that a Division Bench consisting of G.D. Patil and A.M. Khanwilkar, JJ., had on 4.12.2000 orally directed the learned A.P.P., Mr. Singhal to inform the police not to arrest the Petitioner. Mr. Mundargi submits that in spite of the said direction, the petitioner was arrested on 14.1.2001. In view of the above circumstances, we feel it appropriate that this matter be heard by the same Division Bench consisting of G.D. Patil and A.M. Khanwilkar, 3.3."

Thereafter, the matter once again appeared before the Bench, of which one of us (A.M. Khanwilkar, J.) was a party, on 22.10.2002. The same was. however, adjourned to 30.10.2002. The matter was then notified for 31.10.2002, when the following order came to be passed :

"The matter was posted today to enable the Public Prosecutor to place on record the stand of the concerned officer providing justification for the arrest of the petitioner during the pendency of this Writ Petition. Today, when the matter is called out we are informed that the concerned officer has not come, inspite of repeated messages given to him by the learned A.P.P. Counsel for the petitioner states that the concerned officer A.P.I. Joshi was fully aware that the matter is posted today as he was personally present on the date of the last hearing. If this

is correct, then it is a matter of concern for us. We post this matter on 22.11.2002 in view of the request made by the learned A.P.P. as a last opportunity. Before the next date of hearing, the learned A.P.P. shall file an affidavit of the concerned officer In the context of the allegation made against the officer including the one mentioned in the application filed before the learned Magistrate. An advance copy of the affidavit be supplied o the petitioner four days in advance. The concerned officer to remain personally present on the next, date of hearing."

Thereafter, the Bench was reconstituted due to retirement of Shri G.D. Patil, J, The matter was listed on 13.8.2003 before us, when the following order came to be passed :

"Today Shri Gole prayed for adjournment by submitting that Shri Marwadi had gone out of Mumbai prior to 2-3 days and has not returned and, therefore, is unable to attend the Court. He placed the apologies on behalf of Shri Marwadi in this context.

Shri Singhal, Additional Public Prosecutor, submitted the affidavit of Dinesh B. Joshi, Assistant Police Inspector which was sworn in on 9th December, 2002. We are shocked to see such delay in filing this affidavit. When the allegations embodied in the petition are serious, the State should have filed the affidavit of a responsible police officer. But instead of that, for reasons best known to State, API has been chosen to explain the situation. We deprecate this. We expect that affidavit should be of a senior responsible officer concerned with the allegations made in the writ petition. He should be Additional Commissioner of Police connected with crime in question - Zone VII, Mumbai having supervisory power over concerned subordinates. His affidavit should be submitted, if at all State wants to file it, within two weeks.

In the meanwhile, papers of the investigation done so far be called for the perusal of this Court for considering the merits of the petition and the arguments which are likely to be advanced on behalf of the litigating parties. Take on Board after three weeks."

In the meantime, however, the said Rajender Singh, Deputy Commissioner of Police filed an affidavit placing on record the affidavit dated 12.1.2001, which is paginated at pages 71 to 79. Along with affidavit, the report of the Assistant Commissioner of Police, Bandra Division Mumbai, purported to be dated 11.1.2001 has been filed. The Assistant Police Inspector attached to Bandra Police Station also filed affidavit dated 9.12.2002, defending the allegations, in particular with regard to the handcuffing of the petitioner. Thereafter, one more affidavit has been filed by Bipinkumar Singh, the Dy. Commissioner of Police, Zone - IX. Mumbai dated 27.8.2003.

5. The sum and substance of the reply filed on behalf the respondents is that the allegations made against the Police Officers in the complaint dated 22.11.2000 are false. On the other hand, there is ample material on record to suggest that

the petitioner has cheated the said R.A. Rashid. Besides the respondents have denied the allegations made by the petitioner regarding the humiliation, threats etc. while in police custody.

6. We shall briefly advert to the averments in the affidavits filed before us explaining the manner in which inquiry was undertaken and its outcome. The first affidavit is of respondent No. 2 himself, dated December 8, 2000. He has indeed denied the allegations in the writ petition. It is stated that on 4.11.2000 the said K.A. Rashid and his wife gave an application alleging the case of cheating to the tune of Rs. 4.5 lakhs by the petitioner. This application was received by Shri. Subhash D. Jadhav, Senior Inspector of Police who marked it to the respondent No. 2 for inquiry. The respondent No. 2 on receiving the said complaint on 7.11.2000 called the parties to the Police Station. After some deliberation in the presence of respondent No. 2, the parties (K.A. Rashid) informed the respondent No. 2 that he was not interested in pressing the complaint but was interested in getting back his money from the petitioner; and that the petitioner promised to pay the amount to said K.A. Rashid in his presence. As a result, necessary remark was made on the said application which was communicated to the Senior Inspector of Police Shri. Subhash D. Jadhav. It is further stated that after 7.11.2000, the respondent No. 2 did not call any party to the Police station in connection with the said application of K.A. Rashid dated 4.11.2000 and no case was registered against the petitioner. It is also denied that any humiliating treatment was meted out to the petitioner by him (respondent No. 2) or that he had sent any constable in plain clothes with K.A. Rashid to fetch the petitioner on 14.11.2000. The stand taken in the affidavit is that the petitioner was not called to the Police Station on 14.11.2000, but on 7.11.2000. The affidavit further records that the petitioner had sent an application to the Commissioner of Police dated 22.11.2000 and the same was received by Senior Inspector of Police, Bandra Police Station. It is stated that Shri. Subhash D. Jadhav, Senior Inspector of Police submitted his report on this application on 5.12.2000 to the Deputy Commissioner of Police. Zone-VII, Mumbai. In Paragraph 9 of this affidavit, it is clearly stated that no case was registered against the petitioner and that if a fresh complaint was given by K.A. Rashid and his wife, then necessary action will be taken according to the provisions of law. Along with this affidavit, the letter addressed by K.A. Rashid to the Commissioner of Police purported to be dated 19.9.2000 is produced as Exhibit-A. However, there are certain discrepancies in this document which according to the petitioner, would question the genuineness of this document. Although, the letter is stated to be dated 19.9.2000, the same is signed on 4.11.2000. Endorsement has been put by Subhash D. Jadhav Senior Inspector of Police, Bandra Police Station of having received this letter on 4.11.2000. On the reverse, endorsement of respondent No. 2 is recorded indicating that the parties have decided not to press the complaint which is mentioned as 7.11.2000. Besides only xerox copy of this document has been produced before us.

7. Be that as it may, the petitioner filed rejoinder affidavit dated 12.11.2000 reiterating the stand taken in the writ petition. The affidavit also clearly records that after the petitioner gave complaint in writing to the Commissioner of Police on 23.11.2000, he has been receiving threats. One of the person who has administered the threat is named as Rajesh Kamble for which reason another complaint was sent by the petitioner to the Commissioner of Police as well as to Khar Police Station on 29.11.2000. The affidavit also records that the petitioner informed his banker to stop payment of the post dated cheques issued by the petitioner in favour of Rashid, which according to the petitioner, were obtained forcibly from him on 14.11.2000 while in Police Station. The rejoinder also explains other matters. However, it is not necessary for us to burden those aspects with this judgment. However, in paragraph 9 of the rejoinder clear assertion is made that the petitioner was never called on 7.11.2000 as alleged by the respondent No. 2 but was taken to the police station on 14.11.2000 by the constables in plain clothes of the Bandra Police Station.

8. The Deputy Commissioner of Police attached to Zone-VII Shri. Rajender Singh has filed affidavit dated 20th December, 2000. In substance, it is stated that application was received from K.A. Rashid on 19.9.2000 requesting to register a cheating case against the petitioner. That application was sent for inquiry on 3.11.2000 to the Senior Inspector of Police, Bandra Police Station. Inquiry report was however, awaited. Affidavit also records that an application was received from the petitioner dated 22.11.2000 addressed to the Commissioner of Police alleging therein extortion of Rs. 4.5 lakhs committed by respondent No. 2 along with his staff at the behest of K.A. Rashid. It is stated that this application was received on 28.11.2000 from the office of Commissioner of Police which was then forwarded to the Senior Inspector of Bandra Police Station Shri. Subhash D. Jadhav. who in turn carried out an inquiry and submitted his report dated 5.11.2000. It is then stated that after going through the said report, the said Senior Inspector of Police was directed to re-enquire into the matter and submit his final report which was awaited. The affidavit then records that report was received from the Senior Inspector of Police on 11.12.2000 along with one application given by one Dr. Rajesh Kamble against the petitioner. It is stated that the said report was returned to the Senior Inspector of Police with direction to complete the inquiry into the petitioner's application dated 22.11.2000. It is stated that final report was awaited. In paragraph 5 of this affidavit, it is stated that petitioner had also given application dated 22.11.2000 to Special Inspector General of Police (P.C.R.) which application was forwarded to A.C.P. Bandra for inquiry and the report which was awaited.

9. Further affidavit has been filed by said Rajender Singh, Deputy Commissioner of Police, dated 21.11.2000 explaining the reasons for delay in filing the earlier affidavit.

10. Further affidavit has been filed by Rajender Singh, Deputy Commissioner of Police attached to Zone VII dated 12th January, 2001 which mentions that after

the receipt of the complaint from the petitioner, the same was inquired jointly under the supervision of Assistant Commissioner of Police, Bandra Division, Mumbai. During the inquiry, Senior Inspector of Police, Bandra Police Station, had recorded statements of certain persons named in the affidavit. It is then stated that during the inquiry, police also obtained various documents from said K.A. Rashid, which were being verified by the Assistant Commissioner of Police, Bandra Division. The Assistant Commissioner of Police in the meantime submitted interim report dated 11th January, 2001 and on going through the said report, a prima facie, conclusion was reached that K.A. Rashid was cheated by the petitioner and others. It is then stated that after receiving final report in the matter, necessary action as per the provisions of law will be taken against the petitioner and others. Again in this affidavit, no disclosure has been made that the police was contemplating to arrest the petitioner in connection with the complaint filed by K.A. Rashid which presumably was inquired into along with the complaint filed by the petitioner dated 22.11.2000. Moreover, it is unambiguously stated that further action against the petitioner would be taken only after receipt of final report. The interim report dated 11th January, 2001 prepared by the Assistant Commissioner of Police with the assistance of Senior Police Inspector and other police officers of Bandra Police Station is appended to this affidavit as Exhibit-A. Notwithstanding the above, it is seen that the petitioner was arrested by the local police station on 14th January, 2001.

11. The petitioner has filed rejoinder affidavit in January, 2001 making serious grievance about the arrest of the petitioner contrary to the oral directions given by this Court. The affidavit also highlights the humiliation meted out to the petitioner after the arrest including that he was handcuffed and made to sit in white Maruti van while being taken to the Magistrate's Court and pressurised to withdraw this Writ Petition.

Further affidavit has been filed by Shri. Dinesh B. Joshi, Assistant Police Inspector attached to Bandra Police Station dated 9.12.2002 which refers to the interim report prepared by ACP Bandra, Division, Mumbai dated 11th January, 2001. It is then stated that on receiving the said report, the Deputy Commissioner of Police Zone-VII, Mumbai directed on 12.1.2001 by written order to take action as per law. On 13.1.2001 Senior Inspector of Police Mr. Subhash D. Jadhav directed said Dinesh Joshi Assistant Police Inspector to go through the papers and register an offence as per law. On the basis of those written instructions, the offence came to be registered against the petitioner and P.S.I. Gujjar was sent to arrest the petitioner who in turn fetched the petitioner to the Police Station whereupon the petitioner came to be arrested and kept in the Bandra Police Station lock-up. The factum of petitioner having been handcuffed is disputed in this affidavit.

12. There is one more affidavit filed on behalf of respondent sworn by Bipinkumar Singh, Deputy Commissioner of Police, Zone-IX Mumbai dated 27th August, 2003 which more or less reiterates the position stated in the aforesaid

affidavits filed on behalf of respondents.

13. Having perused the pleadings and the record produced before us as well as the oral submissions canvassed before us by the counsel appearing for the parties, in our opinion, it will not be appropriate for this Court to scrutinize the veracity of the rival claim because, any opinion in that behalf may affect the merits of the allegations one way or the other, Moreover, that inquiry is not required to be undertaken by this Court having regard to the limited relief that needs to be considered. We would, therefore, confine our decision only to the limited issues which will be required to be adjudicated by this Court in writ jurisdiction. The first question that arises for our consideration is, whether the written complaint as sent by the petitioner to the Commissioner of Police discloses information regarding the commission of any cognizable offence? We have no hesitation in observing that on fair reading of the complaint, relevant portion whereof as extracted above, discloses the information regarding the commission of a cognizable offence. If that is so, the next question is, whether it was obligatory to register the said information/complaint in the book kept by the Police Officer as is required by the mandate of Section 154 of Code of Criminal Procedure? It is well settled that registration of an F.I.R. involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the Officer Incharge of the Police Station as indicated in Section 154 of the Code. (See 2001 (2) SCC 628: Suresh Jain v. State of Madhya Pradesh and Anr. para 10). It is also well established position that it is the bounden duty of the Officer incharge of the Police Station to register the F.I.R. regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter, It is will be useful to advert to the dictum of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . Paras 29 to 32 thereof read thus:

"29. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined u/s 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

30. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of a Section 154(1) of the Code, the concerned Police Officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the around that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with

the investigation if he has reason to suspect the commission of an offence which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157. Incase, an officer in charge of a police station refuses to exercise the jurisdiction vested on him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

31. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

32. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

(Emphasis supplied)

14. In the present case, since the allegations regarding the commission of offence was against the Police Officers of the concerned Police Station, the petitioner thought it appropriate to forward the complaint in writing to the Commissioner of Police which option was exercised presumably in terms of such remedy provided in Sub-section (3) of Section 154 of the Code. On receipt of such complaint, surely the Commissioner of Police was obliged to ensure that the information so received in the shape of the written complaint was registered as F.I.R. as it disclosed the commission of a cognizable offence. That is not the course adopted by the Commissioner inspite of the statutory obligation to do so. Be that as it may, the Commissioner then forwarded the complaint to the Deputy Commissioner of Police, Bandra Division, Mumbai, to enquire into the matter who in turn directed his subordinates to record statements of the concerned persons. We shall deal with this aspect a little later. In our opinion, when the information relating to the commission of a cognizable offence is reported either orally or in writing as in this case and as the information was not vague or irresponsible rumour it surely required registration u/s 154 of the Code and further steps in terms of Chapter XII of the Code. In such matters, there is no scope for Informal inquiry because such inquiry would partake the colour of investigation. It is only when the information received were to be vague information, anonymous or irresponsible rumour, it would not in itself constitute information within the meaning of Section 154 of the Code or the basis for an investigation u/s 157. However, in the present case written complaint sent by the petitioner, who is a practising Chartered Accountant. Besides, it is very specific and replete with

requisite information. Accordingly, in such circumstances, the same ought to have been reduced into the book maintained for recording of information relating to the commission of a cognizable offence in terms of Section 154 of the Code. We would only observe that if the allegations made in the complaint are found to be true, the same are not only serious but, prima facie, cannot be said to have been done by the concerned Police Officers in discharge of their official duty. The allegations in substance inter alia, are that the Police Officers have played active role to facilitate recovery of certain amounts from the petitioner at the instance of K.A. Rashid; obviously it is not the duty of the Police Officer to facilitate the recovery of amounts or act as a recovery agent using weight of their office.

15. In our opinion, there is not only failure of recording F.I.R. in respect of complaint sent by the petitioner but what is intriguing is that some inquiry is directed which is only reduced to a farce of an inquiry. We say so because, it appears from the record that on receipt of complaint from the petitioner dated 22.11.2000, the Commissioner of Police referred the matter to the Deputy Commissioner of Police, Bandra Division, Mumbai. It would have been a different matter if the Deputy Commissioner of Police, Bandra Division, was to cause inquiry but instead, he, in turn, referred the matter to the Assistant Commissioner of Police, Bandra Division, Mumbai. The Assistant Commissioner of Police then depended on the assistance of Senior Inspector of Police and other police officers of Bandra Police Station which fact has been recorded in the Interim report dated 11.1.2001 submitted by the Assistant Assistant Commissioner of Police. From the explanation offered on behalf of respondents before us, we are persuaded to take the view that the inquiry so conducted was only a show-case without anything more. In as much as the same has been undertaken by the officers of the same Police Station with a seal of approval put by the Assistant Commissioner of Police, Bandra Division by way of his interim report. The gist of the statements of concerned persons recorded in the interim report would clearly show that the main focus about the allegations in the complaint sent by the petitioner to the Commissioner of Police, has been glossed over and instead opinion rather a finding of guilt, is recorded against the petitioner that he has made a false and mischievous allegation against respondent No. 2 with ulterior purpose. In the matter of such serious allegations, the Commissioner of Police should have at least, ensured that the inquiry was done by an independent agency and responsible officer and not by the officers associated with the same Police Station. We make it clear that we are not endorsing the action of the Commissioner of Police directing the inquiry into the matter instead of registering the offence u/s 154 of the Code and of further actions under Chapter XII of the Code. Suffice it to observe that inquiry as made, has no legal efficacy so as to ignore the complaint made by the petitioner in writing which discloses the commission of a cognizable offence. In view of the foregoing discussion, we have no hesitation in directing the respondent No. 1 Commissioner of Police to cause to reduce the written complaint sent by the petitioner dated 22.11.2000 in the appropriate book maintained for the purpose

of registering crime as per Section 154 of the code and further to cause investigation into the said complaint by an independent agency such as DCS CID, having regard to the fact that serious allegations have been made against the police officers of having committed acts of commission or omission constituting cognizable offence; and the matter ought to be taken to its logical end in accordance with law after investigation is completed and report in that behalf is filed before the appropriate Court.

16. The next question that needs to be addressed in this petition is, whether it was appropriate for the police to arrest the petitioner on 14th January, 2001 inspite of the oral direction given by this Court as contended by the petitioner and at any rate, contrary to the assurance given in the affidavit filed by the respondents and especially when the matter was subjudice before the High Court. In this context, it needs to be mentioned that the counsel for the petitioner vehemently states that when the writ petition was listed before this Court on 4th December, 2000 ad-interim relief in terms of prayer Clause (c) was specifically pressed but as the matter was adjourned at the instance of the learned A.P.P. the Court orally observed that the respondents shall not precipitate the matter. Counsel for the respondents however, submits that no such oral observation was made by the Court. According to him, even if an oral observation is made by the Court, the same would have been communicated by him to the respondents in writing-- But there is no material to support this position. It is not necessary for us to enter into this controversy but, in our view, the action of the respondents to cause arrest of the petitioner on 14th January, 2001 cannot be countenanced at all, for this Court was represented by the Respondents in the form of affidavits filed before this Court that further action will be taken against the petitioner only if fresh complaint was to be filed by K.A. Rashid, On the one hand the affidavit filed before this Court as late as 12th January, 2001 (of the Deputy Commissioner of Police) makes a categoric statement that upon receiving final report necessary action will be taken against the Petitioner, however, in utter breach of that stand taken on affidavit, the police proceeded to cause arrest of the petitioner on 14th January, 2001- not because of fresh complaint filed by K.A. Rashid or any final report, but on the basis of the original complaint which it is stated, was enquired along with the complaint filed by the petitioner; and direction issued by the Officer to arrest the petitioner having found sufficient material against him (Petitioner) in respect of complaint filed by K.A. Rashid, in the interim report. Moreover, when the question regarding arrest of the petitioner in connection with the original complaint filed by K.A. Rashid was incidentally subjudice in the writ petition which was pending before this Court and the matter having been adjourned at the instance of the Respondents, in our opinion, there can be no tangible justification for causing arrest of the petitioner on 14th January, 2001. The explanation given by the Respondents in our opinion, is unacceptable and is obviously an after thought. Understood thus, we hold that the action of arrest of the petitioner is inappropriate. Indeed, the injustice caused to the petitioner has been salvaged

because of the release order passed by the Magistrate on 16th January, 2001 when the petitioner was produced before him for remand. We are not however, entering into the allegation regarding handcuffing of the petitioner after the arrest till he was produced before the Magistrate. It appears from the record that issue regarding handcuffing, has been raised by the petitioner before the Magistrate. That aspect can be considered in those proceedings and we express no opinion thereon. Even with regard to the grievance of manhandling or mishandling of the petitioner while in custody till he was produced before the Magistrate, even that issue will have to be considered in the proceedings before the Magistrate or in such other appropriate proceedings, if filed by the petitioner. We also clarify that one of the other serious allegations made by the petitioner against the Police Officers is that when the petitioner was arrested, he was threatened to withdraw this writ petition or face the consequences. If that allegation is established, obviously it will be a serious matter and by itself would constitute the contempt of Court. The petitioner may take recourse to appropriate remedy in that behalf by giving specific details, if so advised. If such proceedings are taken out, the same can be enquired into and decided in accordance with law.

17. While parting, we may observe that although concerned police officer (Respondent No. 2) has been impleaded in writ petition as respondent by name and the allegations against him are personal to him, nevertheless, the Public Prosecutor has thought it appropriate to defend the respondent No. 2. In such a situation, in our view, the Public Prosecutor ought not to defend the officer against whom the allegations of acts of commission or omission are made. (See: 1986 Cri. L.J. 1022 Kannapan v. Abbas).

18. For the aforesaid reasons, we allow this writ petition in the above terms with liberty to the petitioner to take recourse to appropriate remedy on the issues kept open by us, as permissible by law, if so advised. If any further proceedings are instituted by the petitioner, the same will be decided in accordance with law without being influenced by any of the observations made herein. All questions in that behalf are left open.

Accordingly, we issue a writ of mandamus directed the respondent No. 1 Commissioner of Police for Greater Bombay to cause to register said complaint of petitioner Sudhir M. Vora dated 22.11.2000 in appropriate register as is maintained for the purpose of Section 154 of Code of Criminal Procedure. If such register is not maintained, to open a register as required u/s 154 and then to register the said complaint. We further direct him to then cause investigation into the matter in accordance with necessary provisions of law as observed by us above. Further, if the offence is made out during the investigation, a report in that context be submitted to the appropriate Court of Magistrate as per the provisions of Section 173 of Cr.P.C., 1973. If no offence is disclosed, an appropriate summary be sought from the concerned Magistrate.

Rule made absolute on the above terms.