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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 13 OF 2024

Namrath Nithyananda Shetty

Applicant

.. (Orig. Complainant)

Versus

Police Inspector, Lonikand Police Station and
Ors.

.. Respondents

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- Mr. Amarlal H. Ramrakhiani, Advocate i/by Mr. Vaibhav P. Shinde for Applicant / Complainant.
 - Mr. Jignesh Gor, Advocate for Respondent Nos.2 and 4.
 - Ms. Dhanalakshmi Krishnaiyer, APP for the State.
 - Mr. Suhas P. Patil, API, Economic Offence Wing, Pune City present.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 05, 2024.

P.C.:

1. Heard Mr. Ramrakhiani, learned Advocate for Applicant; Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State.

2. After hearing the parties on 28.11.2024, this Court passed the following order.:-

“1. Heard Mr. Ramrakhiani, learned Advocate for Applicant; Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State.

2. In view of the issue involved in the present Criminal Revision Application (for short “CRA”), it needs to be heard finally so that appropriate order can be passed.

3. Briefly stated, Revision Applicant is aggrieved with the impugned order dated 02.08.2023, inter alia, dismissing his

complaint under Section 203 of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) by the learned JMFC, Pune.

4. The principal ground to challenge the order is with reference to a specific direction contained in the previous order dated 29.06.2022 passed by the same Court, however, by the predecessor JMFC. This order is appended at Exhibit “C” – page No.32 of the CRA. By virtue of this order, directions were given to the Investigating Officer (IO) by the Court to carry out further investigation with reference to specific directions and observations of the Court in that order and file a report within a period of one month from the date of the order. That report ought to have been filed on or before 28.07.2022. Admittedly, it was not filed. Sequitur of this is that the IO has not complied with the said order.

5. Ground to challenge the impugned order is specifically with respect to the directions contained in the previous order dated 29.06.2022. Mr. Ramrakhiani, learned Advocate has candidly informed the Court that on 21.06.2023 complainant through his Advocate filed a pursis. While drawing my attention to the said pursis he would submit that complainant was virtually tired and harassed and resultantly filed the said pursis which is evident after reading the contents. He would submit that after passing of order dated 29.06.2022 the matter was listed before the Trial Court on 9 different occasions upto 14.06.2023 and adjourned without any orders. In that view, complainant filed the pursis to stop further inquiry under Section 202 of the Cr.P.C. as suggested by the Court. He would submit that not even once, the Court called upon the IO to comply with the order dated 29.06.2022.

6. Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State would oppose the Application and would submit that it is at the Applicant / complainant’s own volition that pursis was filed and the matter was heard finally leading to passing of the impugned order. Hence, it is now not open to him to re-agitate the same issue and re-visit the order dated 29.06.2022. I have perused the order dated 29.06.2022 and the impugned order. On going through both the orders, what I find intriguing is the fact that transactions involved in the present case have already been taken into cognizance in the report of the IO submitted previously in compliance of the previous order dated 11.09.2019. Inquiry was conducted by IO under Section 202 of Cr.P.C. and report dated 25.10.2021 was filed in the Court, which was taken on record and marked as Exhibit “11”. It is only thereafter that the matter was heard by the learned Trial Court on 29.06.2022. The directions contained in paragraph Nos.4 and 5 of the order dated 26.06.2022 in the opinion of the Trial Court would require further investigation as it would unearth the real facts in the case under investigation. The directions were given in view of the inadequacy of investigation seen from the previous report dated 25.10.2021 which was taken on record

below Exhibit "11".

7. In that view of the matter, directions contained in the order dated 29.06.2022 ought to have been complied with. Admittedly, record indicates that they have not been complied with. The concerned IO has gone completely scot-free and it is seen that between 29.06.2022 to 14.06.2023 even though the matter was listed before the Trial Court on 9 different occasions, the Trial Court did not find it necessary and suitable to seek an explanation from the IO for not filing the further investigation report. Hence, the IO is directed to file his personal Affidavit for not abiding by the order 29.06.2022 and explain to the Court the reasons for non-compliance of the directions contained in the said order. Such Affidavit of the IO shall be filed within a period of one week from today positively. IO shall explain the reasons for non compliance and filing of the report as directed by the said order dated 28.07.2022.

8. In so far as the merits of the present case in the CRA are concerned, the impugned order which is annexed at page No.27 of the CRA proceeds on the premise that Court will have to see whether there is evidence in support of the specific allegations of complainant and not whether the evidence is sufficient to warrant a conviction.

9. In this background, when the learned Trial Court itself came to a categorical conclusion that further investigation on the specific issue delineated in paragraph Nos.4 and 5 of the impugned order dated 29.06.2022 was required, it was the duty of the prosecution to ensure that the said order was complied with and the further report was filed. I say this because there is a categorical direction for filing of further report by the IO under Section 202 in the impugned order in paragraph No.9, inter alia, relating to reflection of the monetary transaction and the fact that the accused has already paid the alleged amount. Nothing compelled the prosecution to comply with the directions contained in paragraph Nos.4 and 5 of the order dated 29.06.2024 to carry out further investigation and file the further report as called for by the Trial Court.

10. The impugned order when it refers to the report filed by the IO does not state the date of the report and it would be refer to the report dated 25.10.2021, which was taken on record and marked below Exhibit "11".

11. Merely on the basis of the above reason, which is the only reason stated, the impugned order has been passed dismissing the complaint. In that view of the matter, I am of the prima facie view that the impugned order is not sustainable. I shall hear the Respondents. However, private Respondents and the learned APP are at liberty to file additional Affidavit, if any, as directed by the IO to oppose the Application. Affidavits shall be filed within a period of one week from today.

12. IO in the present case is directed to remain present on the

next adjourned date on VC. Ms. Krishnaiyer, learned APP is directed to give the VC link to the IO, on the date on which this matter will be listed on board.

13. *Learned Advocates are directed to complete their pleadings on or before the next date.*

14. *Parties are directed to file their compilation, Affidavits, if any, if so desired and exchange the same in advance with the other side so that on the next adjourned date this Court can hear the CRA and decide the same.*

15. *Stand over to 05th December 2024.”*

3. In compliance of the above order, Ms. Krishnaiyer, learned APP has filed Affidavit of the Assistant Police Inspector, Economic Offence Wing, Pune City, *inter alia*, stating the reasons for inability of the I.O. to file fresh report as directed by the learned Trial Court and as delineated in the above order. I have perused the Affidavit dated 04.12.2024 and in view of the reasons stated therein, they *prima facie* appear to be believable. The reasons for the delay stand accepted, however with a caveat that in view of this Revision Application been decided by Court today, the concerned Assistant Police Inspector, Economic Offence Wing, Pune City, who is now the incumbent I.O. shall prepare a fresh report as per directions of this order.

4. Reason for passing this order is primarily because directions contained in the order dated 29.06.2022 required the Investigating Officer (for short “IO”) to conduct further enquiry under Section 202 of the Code of Criminal Procedure, 1973 (for short “Cr.PC”). These directions were passed only after the learned Trial Court applied its mind to the previous report submitted by the IO dated 25.10.2021 and

found inadequacies therein.

5. In that view of the matter, I have heard Mr. Ramrakhiani, learned Advocate for Applicant; Mr. Gor, learned Advocate for Respondent Nos.2 and 4 and Ms. Krishnaiyer, learned APP for the State. With their able assistance perused the record of the case.

6. Ms. Krishnaiyer, in her brief submissions would submit that in view of the *pursis* filed by Revision Applicant before the Trial Court on his own volition seeking closure of any further investigation, it is now not be open for him to re-agitate the same issue, since he waived his right in entirety for any further investigation.

6.1. In support of her submissions, she has referred to and relied upon the following decisions of the Supreme Court:-

- (i) *Srinivas Raghavendraro Desai (Dead) by Lrd. Vs. V. Kumar Vamanrao @ Alok and Ors.*¹;
- (ii) *Mayadevi Kishanswarup Gupta Vs. Government of India and Ors.*² and
- (iii) *K. Vadivel Vs. K. Shanthi and Ors.*³.

6.2. While referring to the decision in the case of *K. Vadivel* (3rd *supra*), she has drawn my attention to paragraph Nos.42 to 46 and would contend that filing of the present CRA pursuant to Revision

1 Civil Appeal No(S).7293-7294-2010 decided on 04.03.2024.

2 2014 SCC OnLine Guj 2374.

3 Criminal Appeal @ SLP Criminal No.4360 of 2022 decided on 30.09.2024.

Applicant himself waiving his right would amount to further delay the trial. She would submit that the net result would be that the trial will still remain unconcluded. She would submit that if the present CRA is allowed, it would amount to allowing further investigation in the matter and in that view of the matter, once the closure *pursis* has been filed, this Court should not entertain the present CRA. The submissions made by Ms. Krishnaiyer, learned APP are not acceptable in the facts and circumstances of the present case because, re-investigation directed by the Trial Court in its order dated 29.06.2022 after consideration of the report of the IO dated 25.10.2021 is not done and the complaint is dismissed. Court has found specific inadequacy in the previous report which has been directed to be reinvestigated and complied with.

6.3. In that view of the matter, a fresh report was directed to be made. Paragraph Nos.45 and 46 of the above decision in the case of *K. Vadivel* (*3rd supra*) are relevant and quoted herein below for reference:-

“45. The victims of crime, the accused, and the society at large have a legitimate expectation that justice will be available to the parties within a reasonable time. It is beyond cavil that speedy and timely justice is an important facet of rule of law. Denial of speedy and timely justice can be disastrous to rule of law in the long term. Even if the parties involved in a case themselves, with no valid justification attempt to delay the proceedings, the courts need to be vigilant and nip any such attempt in the bud instantly. The administration of justice feeds on the faith of the citizenry and nothing should be done to even remotely shake that faith and confidence.

46. The legal profession has an important role to play in the process. Any proceeding or application which prima facie lacks merit should not be instituted in a court. We are constrained to observe this because of late we notice that pleadings/petitions with outrageous and ex facie unbelievable averments are made with no inhibition whatsoever. This is especially so in some family law proceedings, both civil and criminal. Reading some of the averments therein, we are left to wonder whether at all the deponents were conscious of what has been written purportedly on their behalf, before appending their signatures. These misadventures directly impinge on the rule of law, because they add to the pendency and the consequential delay in the disposal of other cases which are crying for justice. It is time that such frivolous and vexatious proceedings are met with due sanctions in the form of exemplary costs to dissuade parties from resorting to such tactics. If we have desisted from such a course in this case, it is only because the High Court allowed the petition and it is here that we have, reversing the High Court, dismissed the petition for further investigation.”

7. What is stated therein is that speedy and timely justice is an important facet of rule of the law and in case of any attempt to delay the proceedings, the Courts need to be vigilant and nip any such attempt in the bud instantly. It further holds that whether it is the victims of crime, the accused and the Society at large, all have a legitimate expectation that justice will be available to the parties within a reasonable time.

8. This also translates into the fact that if the learned Trial Court in the present case has applied its mind and has given specific directions to prepare a fresh report after carrying out further investigation, then the same should be complied with. In the instant case, without having benefit of the fresh report as directed by the Trial Court, CRA has been determined. Undoubtedly the reason is the

closure *pursis* filed by the Revision Applicant. However, as observed in the previous order, the closure *pursis* has been filed in the circumstances which are beyond the control of the Revision Applicant. Undue delay has led to filing of the closure *pursis*.

9. Mr. Gor has submitted that ideally it would have been possible for the Trial Court to call for the fresh report after further investigation during the time when the said matter came to be repeatedly adjourned before the Trial Court. However, this was not done.

10. In view of the above, I am inclined to set aside the impugned order dated 02.08.2023 dismissing the compliant under Section 203 of Cr.PC and direct the IO to comply with the directions contained in the order dated 29.06.2022 and prepare a fresh report after carrying out further investigation as per those very directions. The fresh report shall be considered by the Trial Court alongwith the previous report dated 25.10.2021 and the learned Trial Court is directed to determine and adjudicate the complaint afresh strictly in accordance with law.

11. Considering the time lapse and the delay that has occurred, the IO is directed to prepare the fresh report and carry out further investigation as directed by the learned Trial Court in its order dated 29.06.2022 within a period of four (4) weeks from today.

12. Both the parties shall cooperate with the IO. If the IO calls

the parties and directs them to present any documents which may be required by him to prepare the report and carry out further investigation as per the directions contained in the order dated 29.06.2022, the parties shall co-operate.

13. Once fresh report is submitted to the learned Trial Court, the learned Trial Court is directed by this Court to hear both the parties, give the parties the fresh report and only after that determine the legality and validity of the complaint under Section 203 of Cr.P.C.

14. The learned Trial Court is directed by this Court to hear both the parties and determine the complaint by passing a speaking order after hearing both the parties within a period of eight (8) weeks from the date of filing of fresh report by the IO before the Trial Court.

15. Needless to state the learned Trial Court shall not be influenced by any of the findings returned in the impugned order since the impugned order dated 02.08.2023 stands quashed and set aside.

16. In view of the above, CRA is disposed.

[MILIND N. JADHAV, J.]

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