

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3960 OF 2019

Mr.Dilranjan Bhatt)
Aged: 59 years,Occupation: Service,)
having his office at c/o. Britannia Industries)
Limited, B 28, Five Star MIDC,)
Ranjangaon, Pune 412 220)...Petitioner

Versus

The State of Maharashtra)
Through Lokmanya Tilak Marg,)
Police Station, Mumbai)
District - Mumbai)...Respondent

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Mr. Aabad Ponda a/w. Mr. Karan Asrani i/b. Udwadia & Co. for the
Petitioner.

Mr.H.J.Dedhia, APP for the Respondent -State.

Mr.Y.C.Pache, PI, N.M.Joshi Marg Police Station present.

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CORAM : S. S. SHINDE, J
DATE : 20 September 2019

JUDGMENT

1. Rule. Rule made returnable with the consent of the parties and
heard finally at the stage of admission.

2. The learned Counsel appearing for the petitioner, at the outset, on
instructions, states that the petitioner does not press the relief in terms of
prayer clause (a) and restricts the relief in terms of prayer clause (b),
which reads as under :

*"(b) direct the Learned Magistrate to direct the Police to
give a copy of the report to the Petitioner under such terms
and conditions as this court may deem fit".*

Trupti

3. Heard learned Counsel appearing for the petitioner and learned APP appearing for the respondent -State at length. The learned Counsel for the petitioner relying upon exposition of law by the Hon'ble Supreme Court in Bhagwant Singh v. Commissioner of Police reported in (1985) 2 SCC 537 submits that the informant is entitled to receive copy of 'C' summary report so as to prefer protest petition. He also submits that the lower Court has made prima facie observations in the impugned order that, in the present case the police have filed 'C' summary and no accusation has made against the complainant and therefore, the petitioner is not entitled for the copy of 'C' summary report, and accordingly notice was issued to the petitioner. He therefore submits that as the petitioner wish to prefer protest petition, 'C' summary report is necessary. He therefore submits that the purpose would be served if this Court issues directions in terms of prayer clause (b) of this petition.

4. The learned APP for respondent -State submits that the reasons assigned by the lower Court in the impugned order are plausible reasons, and hence the impugned order needs no interference. He therefore prays that petition may be dismissed.

Trupti

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5. Heard learned Counsel appearing for the parties. With their able assistance, I have perused the pleadings and grounds taken in the petition and annexures thereto. I have also perused the impugned order.

6. A short question arises in this petition is, whether the copy of 'C' summary report is required to be given to the informant who wish to file protest petition or not. In this regard, exposition of law in the case of Bhagwant Singh (*supra*) needs to be taken into consideration. The Hon'ble Supreme Court in paragraph No.4 of the said judgment held as under :

"4. Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-

section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173 the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it

might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."
underline supplied

7. Considering the ratio laid down by the Supreme Court in the case of Bhagwant Singh (*supra*) and also considering the fact that the petitioner desires to prefer protest petition, he cannot be deprived from that opportunity.

8. In that view of the matter, petition is allowed in terms of prayer clause (b) and disposed of accordingly.

9. Rule made absolute in above terms.

10. The learned APP appearing for the respondent -State, on instructions of the Investigating Officer, who is present in the Court, assures this Court that such copy will be supplied to the petitioner on or before 24.09.2019.

Trupti

11. The Investigating Officer is directed to supply copy of the 'C' summary report at free of cost to the petitioner.

[S. S. SHINDE , J]