



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. 4471 OF 2012

Mrs. Ratna Chandrakant Vannam And .. Petitioners  
Anr.

Versus

Tukaram K. Jadhav, API, Wadala TT .. Respondents  
Police Station And Ors.

...

Adv.Suvidha Patil for the Petitioners.  
Mr.D.J. Haldankar, APP for the State.

**CORAM: BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.  
DATED : 23<sup>th</sup> OCTOBER, 2024**

**JUDGMENT (Per Bharati Dangre, J)**

1. The petition filed by the two petitioners under Article 226 of the Constitution of India, r/w 482 of the Code of Criminal Procedure, 1908 seek quashing of LAC No.451/2012, of Wadala TT Police Station, pending against the petitioner no.2, Mr. Chandrakant Vannam before the Metropolitan Court, Dadar, Mumbai.

Apart from the aforesaid relief, the petitioners have prayed for issuance of show cause notice to the respondent nos.2, 3, 4 and 5 for not taking action on the petitioner's complaint and direction is also sought to the respondent no.3 to investigate into the complaint lodged against respondent no.1, and conduct an inquiry in the presence of the petitioners and file it's report in the Court.

In addition, a compensation in the sum of Rs. 5,00,000/- is prayed for the illegal detention and mental harassment caused to the petitioners.

This petition was instituted on 13/12/2012.

By order dated 1/03/2013, this Court granted leave to amend the petition by joining the respondents, who were alleged to have detained the petitioner no.2, in their personal capacity.

Upon this liberty being conferred, respondent nos.2 to 5, were named in their individual capacity.

In addition, the original complainant, Mrs. Jagadevi Surakant Bhagode, was also impleaded as respondent no.7, by carrying out an amendment on 22/04/2013.

2. On 23/07/2013, the following order was passed:-

*“1 Let the Respondents file an affidavit and explain as to how at least one of the Petitioner was detained by them as alleged in the petition and in connection with the offences which the Petitioners term as non cognizable. Let the Respondents explain as to how in the matters, where complaints are of unauthorized construction, they proceed against those whom they term as offenders and bring them to the Police Station and detain them as alleged.*

*2 Stand over to 06.08.2013. On the adjourned date, if an affidavit is not filed explaining as above, the Court will proceed on the footing that none of the allegations in the petition are denied.”*

3. On 14/08/2013, the Division Bench took cognizance of the grievance of the petitioner and noted that on issuing notices, the respondents have not filed any affidavit in reply, despite the specific direction on 23/07/2013.

Since the AGP, representing the State informed the Court that State will hold an inquiry, so as to ascertain whether the allegations have some basis and after such preliminary scrutiny and

inquiry it shall decide, whether any disciplinary proceedings can be held against the erring officials, it was ordered as under :-

*'In the circumstance, we have no other alternative but to presume and proceed on the footing that the statements in the petition remained un-controverted. Hence, we issue Rule on the writ petition.'*

4. Expressing its displeasure over the manner in which the whole matter was approached, this Court was constrained to observe as below:-

*"..Coming from the highest police officer and superiors, this response shows, as has been observed by us repeatedly in our earlier orders that the allegations against the police officers are taken very lightly and casually. The citizens are not believed as a matter of course. They are never informed as to what is the outcome of their complaints made against the police officers and members of the police force. Instead, there is complete inaction and therefore such citizens are forced to approach this Court alleging that the complaints made by them have remained unattended. The police officers are not being proceeded against even when serious allegations are made and, therefore, this Court should intervene is the request invariably made in all such petitions by the petitioners who are the complainants or the accused.*

*9 Once the law does not permit any detention in custody in cases of the nature involved in the writ petition and that is the primary allegation and equally the police officials, the police station is named, then we do not see any scope for preliminary inquiry. These are prima facie undisputed facts. Thereafter the inquiry will be as to why the police official adopted the course alleged and whether he has acted in accordance with law or has brushed it aside. Whether this is a case of misconduct, dereliction of duty or an act unbecoming of a police officer is within the scope of inquiry in terms of the service rules and regulations. We do not see any reason in stating that a preliminary inquiry is necessary to ascertain the truth of the allegations in such cases and in the facts peculiar to this case, as well, we do not see why we should permit the respondent State to hold any preliminary inquiry."*

5. The petition was kept pending, since the petitioner has sought relief of compensation from the erring police officers and therefore, a direction was issued that the Competent Authority in terms of the service rules and regulations, shall serve a charge-sheet

on the police officers concerned and hold regular Departmental Inquiry and conclude it as expeditiously as possible, within a period of four months from the date of receipt of the order.

It was also kept open for the inquiry officer to record his opinion and independent satisfaction as to the guilt or otherwise of the police officers concerned, and then to submit the report.

It was also further noted that if the acts of the police officers are such that they are guilty of offences, as well apart from breach of Service Regulations, they must be proceeded in accordance with the criminal law.

The Writ Petition was, therefore, directed to be placed for final disposal after the report of the inquiry was placed before this Court.

In compliance of the direction, report dated 20/02/2014 received from the Additional Police Commissioner, Mumbai was placed on record.

Perusal of the said report would reveal that on conducting the disciplinary proceedings against Mr. Tukaram Krushna Jadhav, A.P.I., Wadala TT Police Station i.e. respondent no.1 was found to be guilty and he is imposed with a fine of Rs. 2000/-.

6. The petition being admitted, was pending for adjudication, and it was even dismissed in default for want of prosecution on 7/09/2023, but on 9/08/2024, we permitted its restoration and directed it to be listed for final hearing, by our order dated 6/09/2024.

During the course of hearing, the learned APP, tendered

the copy of the affidavit on record and we also retained the original file containing the necessary documents, so as to verify the truthfulness of the allegations and also the proceedings that have been adopted by the respondents.

7. We have heard Advocate, Ms. Suvidha Patil, for the petitioner and the learned APP, Mr. Haldankar, for the respondents.

Facts in brief, must be set out before we consider the grievance of the petitioner.

We are also informed by Ms. Patil that during the pendency of the petition, the petitioner no.2, passed away and hence the petition is only prosecuted by the petitioner no.1, Mrs. Ratna Chandrakant Vannam.

The petitioners to the petition, the wife and husband owned a hut bearing No.89 at Siddharth Nagar, Sion, Koliwada, Mumbai, and in the month of September, 2012, they started work of its repairing, as it was partially damaged on account of heavy rain. The petitioners hired a nearby contractor for undertaking the said work.

On 9/09/2012, the adjoining hut owner Mr. Bhagode came there and started demanding Rs. 20,000/- from the petitioners and threatened that if the money is not paid, they would be implicated in an offence through the police. The petitioners did not succumb to the threat and instructed the workers to continue the work and visited Wadala TT Police Station to lodge a complaint.

Mr. Tukaram Jadhav, the respondent no.1, who was on duty in the said police station refused to lodge their complaint, on the

pretext that it is the matter which fall within the purview of B.M.C and hence the couple returned home.

The petitioners received a call from Wadala TT Police Station and they were informed that the 5 workers on the site were arrested and they have been taken to the Police Station and even they were summoned to the police station.

On reporting to the police station, petitioners found that their neighbour was present and when the lawyer of the petitioners met Mr. Tukaram Jadhav, he was informed that an NC has been registered against the petitioners and a notice under Section 149 of the Criminal Procedure Code was also served upon them.

The lawyer of the Petitioners requested API Jadhav to register the complaint of the petitioners, but he refused to do so and the petitioners, along with the workers on their site and the complainant were asked to wait there.

8 It is the narration in the Petition that API Jadhav took petitioner no.1 aside and demanded Rs. 10,000/- for sorting out the matter, so that permission can be afforded to carry out the work, but when he did not accede to the demand, he informed Mrs. Ratna Vannam that the complaint is lodged against her husband and the workers and they have been arrested, and fine of Rs. 12,000/- has been imposed upon her husband and a fine of Rs.1200/- was imposed on each of the arrested worker. She was told to pay the fine, failing which she was told that all the persons would be produced before the Magistrate.

When the petitioner no.1, came out of the police station,

she met Mr. Sachin Bhagode, who disclosed his ties with the brother of ex-corporator and she was threatened that since he had used the connect, the petitioners can do nothing.

In the evening, the brother of the Mrs. Ratna Vannam visited the Police Station and paid fine of Rs. 1200/- for each worker and procured 5 receipts from the police station and they were released, but since she was not having a sum of Rs. 12,000/-, she was unable to secure release of her husband, who was then shifted to Matunga Police Station lock up.

9 On 10/10/2012, Mr. Chandrakant Vannam was produced before the Magistrate at Bhoiwada, without any clue about for what purpose, he was arrested, she was asked whether he want to plead guilty or not, but since he was unaware of the charges, he pleaded not guilty. Thereafter, Mr. Chandrakant was granted cash bail of Rs.5000/- by the Magistrate and he was released.

10 After this episode, the lawyer of the petitioner served the complaint on senior P.I. of Wadala TT Police Station, for appropriate action and copies of the same were also forwarded to DCP Zone 4. On a look at the receipts issued by Wadala TT Police Station, their lawyer suspected that they were fabricated and fake, and therefore, he was instructed to take appropriate action and accordingly, he preferred applications under Right to Information Act (RTI), seeking information regarding the receipts and also regarding the LAC Nos. 451, 452, 453, 454, 455, and 456 of 2012.

Information was received from the Appellate Authority under the RTI Act, which made the petitioners conclude that the

arrest of petitioner no.2, by A.P.I., Jadhav, was illegal.

Despite making complaint to Senior PI, Wadala TT Police Station, no action was taken against API Jadhav, nor any action was taken against the petitioner's neighbour and this constrained the petitioners to approach this Court on 13/12/2012 by the present petition.

The petition is accompanied with the notice issued under Section 149 of the Cr.P.C to the petitioners by Senior PI, Wadala TT Police Station on 9/09/2012, with reference to N.C No.1794 of 2012. At this stage, we must refer to Section 149, which is included in Chapter 11 of the Code of 1973, which reads thus.

149. Police to prevent cognizable offences : Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

The petition is also accompanied with five receipts of Rs.1200/- shown against LAC No.452/453/454/455/456/2012, with reference to Section 115 (c) of the Maharashtra Police Act.

11. A copy of the complaint addressed to the Senior PI, Wadala TT by the petitioner no.1, on 9/09/2012, intimating that API Tukaram Jadhav, had refused to register the complaint, and on the contrary arrested her husband, is also annexed along with the petition. Another detail complaint, setting out the grievance and also about the demand of a penalty of Rs. 12,000/- against her husband and Rs. 1200, against the five workers, specifically find a mention in the said complaint.

The copies of the application referred to the information officer under the RTI and the response received along with a copy of



the record. A copy of the NC registered against the petitioner no.1, on the NC registered against the petitioner no.1, on the complaint of Mrs. Jagadevi Surakant Bhagode, respondent no.7, is also part of the petition.

12. We have perused the annexures appended to the petition. In response to the application for obtaining information under Right to Information Act, 2005, from the Public Information Officer, Wadala TT Police Station, where the advocate of the petitioners sought details of the offences registered vide LAC Nos. **451 to 456 of 2012** as well as the copies of the same, the extract of the Register in which a noting of the fine against the five persons was recorded, is produced.

API, Wadala TT Police Station, furnished the information on 12/11/2012, by narrating that on 9/09/2012, a complaint was received from Mrs. Jagadevi Surakant Bhagode, resident of Koari Agar, Mhada Chawl No.F/54/6, Wadala, Mumbai, that unauthorized construction was ongoing in her neighborhood and when the patrolling squad reached the spot, she pointed out to the persons, who were carrying out the constructions, and therefore, a NC No.1794 of 2012 was registered under Section 503 and 504 of IPC. Similarly, an NC was also registered on the complaint of Mrs. Ratna Bai Vanam (Petitioner No.1) and notice was issued against them under Section 145, and by directing them to deposit the fine amount, the persons at serial nos.1 to 6, were released but the person at Serial no.7 failed to deposit the said amount, and therefore, he was produced before the Magistrate.

The list includes the name of six persons, who had paid

the fine of Rs. 1200/-, whereas Chandrakant Vannam i.e. petitioner no.2 was imposed with a fine of Rs. 4000/-. Along with the information supplied copy of the NC No.1794 of 2012, and 1795 of 2012 along with the entries taken in the Station Diary were also furnished to the person, who sought the information.

The Station Diary which was furnished under the Right to Information Act, 2005, dated 9/09/2012, refer to the call being received from Mrs. Jagadevi Suryakant Bhagode, who pointed out to the persons, who were carrying out the unauthorized construction, which included Mr. Chandrakant Vannam, the owner and 5 other workers. The Station Diary record that the action is initiated against them by registering LAC Nos. 450 to 456 of 2012

13. On the said complaint, LAC No. 450 of 2012, was registered against Chandrakant under Section 110 of the Maharashtra Police Act, 1951, whereas against the persons from serial nos. 2 to 6 i.e. the workers on the site, in LAC No.450 to 456/2012, action under Section 115 (c) of the Maharashtra Police Act was taken and Chandrakant Vannam was asked to deposit the fine, by initiating action under Section 33 (T). The Station Diary of 17.50 hours on 9/09/2012, record that since the persons at serial nos.2 to 7, had deposited the fine amount, they were released. However, Chandrakant Vannam was unable to do so, therefore, he was remanded to custody in Matunga Police Station.

14. The question that arises for consideration is whether, the petitioner no.2, who have been arrested in the given facts and circumstances, was justified in law.

On 7/10/2024, Senior Police Inspector, Wadala TT Police Station, Mumbai, has filed an affidavit on behalf of respondent no.6, wherein it is stated that the LAC No.451/2012 under Section 33(T) r/w Section 131 of the Mumbai Police Act, was registered on 9/09/2012, against Petitioner No.2, and API Mr. Tukaram Jadhav, was the Investigating Officer.

15. The affidavit state that Mrs. Jagadevi Bhagode, made a call to the police control room, that her neighbour Mrs. Ratna Chandrakant Vannam is carrying out unauthorized construction, and while doing so, she has placed 1-beam, which was protruding inside the complainant's room, posing danger to her family, and when she raise this objection, Mrs. Ratna Vannam, abused her. Mrs. Bhagode, thereafter, visited Wadala TT Police Station and filed NC vide No.1794 of 2012, at 10:45 hours. In Paragraph nos.7 and 8 of the affidavit, it is stated as below:-

*“7 I say that police mobile van received call from Police Control Room at about 10.45 hours that some people are creating nuisance behind Gagangiri building, Pratiksha Nagar. When police van reached the spot and contacted the complainant Mrs.Jagdevi Suryakant Bhagode, she informed that the construction work in front of her was causing nuisance and botheration to her. Hence, the police personnel brought five labourers viz. 1) Arjun Namdeo Hirwade 2)Sunil Pal, 3) Atmaram Kharat (4) Bhagwan Sakpal and (5) Chhota Pal to Wadala T.T. Police Station and informed the Station House Officer, Assistant Police Inspector Mr.Tukaram Krisihna Jadhav. Accordingly, station diary was prepared which is at Exhibit-B to this affidavit.*

*8 I say that some time the petitioner no.1 came to Wadala T.T. police station at 13.00 hours along with her husband and petitioner no.2 and filed non-cognizable offence vide No. 1795/12 against Ms.Jagdevi Suryakant Bhagode which is at Exhibit-C to this affidavit. I say that on the basis of the cross complaints filed by both the parties, API Tukaram Jadhav issued notices u/s.149 of Cr.P.C to Ms.Jagdevi Suryakant*

*Bhagode as well as the petitioners.”*

The deponent has further stated that since the construction work being carried out by the petitioners, was found to be prima facie unauthorized and posing danger to their life, the petitioner no.2 was booked under Section 33(T) of the Maharashtra Police Act, vide LAC No.451/2012, and was required to pay fine. However, since he refused to comply, he was arrested, and send to Matunga Police Station lockup, after conducting his medical checkup and taking an entry in the Station Diary.

It is also categorically stated, that the petitioner no.2 was told to furnish personal bond, but he refused, whereas the other accused/the workers paid fine and were released immediately.

On the next date, the Petitioner was produced before the Metropolitan Magistrate, where he pleaded not guilty and was released on bail.

What is surprising to note is the following averment in the affidavit:

*“12I say that the allegations levelled by the petitioners are after-thought and not true. I deny the allegations made by the petitioners against the police. I say that the petitioners did not co-operate and on the contrary misbehaved with the police. Even though the petitioners themselves filed the complaint about non-cognizable offence the petitioner no.2 refused to sign on NC in acknowledgment and the said fact is mentioned in that N.C. Copy of the non-cognizable complaint is produced at Exhibit-G.*

*13 I say that departmental inquiry was set up against the respondent no.1 and he was held responsible for not filing affidavit as per direction of the Hon’ble Court and was directed to pay Rs.2000/- as and towards penalty. I say that copy of the departmental inquiry report dated 20/02/2014 is filed in the court in this petition.*

Ashish

14 I say that the allegations made by petitioners in the present petition are false and baseless. I deny each and every allegation made therein and pray that the petition be rejected with costs.”

The above affidavit is affirmed by the Senior Inspector, Wadala TT Police Station, Mumbai.

16. We have perused the final order placed before us in compliance of the directions issued on 14/08/2013, when the State Government had made a statement, that it shall hold a preliminary scrutiny and inquiry, to decide whether any disciplinary proceedings are to be held against the erring police officials, but noting that none of the allegations in the petition have been denied, this Court made it clear that there is no need to hold a preliminary inquiry, to ascertain the truth of the allegations as there are *prima facie* undisputed facts, and therefore, the inquiry will have to be made, as to why the police official adopted the course alleged, and whether he has acted in accordance with the law or he has brushed it aside. It was also clarified that whether it was a case of misconduct, dereliction of duty or an act of unbecoming a police officer, is within the scope of inquiry, in terms of the service rules and regulations and therefore, a direction was issued to serve charge-sheet on the police officer concerned and hold a regular departmental inquiry, and concluded it expeditiously within period of four months.

Even the petitioners were permitted to place any material before the inquiry officer, if they so desired, by informing them, the date, time and venue of the inquiry.

17. In light of this direction, we have perused the final order,

which has set out the charge against Mr. Tukaram Jadhav, API of Wadala TT Police Station, and the finding of the inquiry, as well as the order imposing the penalty.

The accusation faced by Mr. Tukaram Jadhav, is as regards the wrongful arrest of the petitioner no.2 and that his wife had sought an inquiry into the said act by preferring complaints, as well as approaching the High Court. He therefore, faced a charge to the following effect:-

- i) *As the station incharge, he adopted irregularity in the proceedings.*
- ii) *Before effecting arrest of Chandrakant Vanam, the veracity of the incident was not ascertained.*
- iii) *It was only after giving notice under Section 149, if the offence was committed, the action was warranted, but this was not followed.*
- iv) *The action taken was in violation of law, and hence illegal, which caused the High Court to question, the procedure adopted and disciplinary proceedings, were directed to be initiated against him.*

A show cause was therefore issued to respondent no.1, as to why he shall not suffer punishment under the Rule 3 of Mumbai Police (Disciplinary and Appeal Rules), 1956.

The report reflect that during the course of inquiry, conducted by the Assistant Police Commissioner, Mahim Division, seven witnesses were examined from the Government side. However, except the witness nos. 6 and 7 (Complainant and her husband) no other person offered any information about the procedure adopted by the delinquent.

The order record that since the delinquent was of the view of Chandrakant Vannam, the husband of the appellant has

committed an offence under Section 33(T) along with Section 131 of the Maharashtra Police Act, and therefore, in terms of Section 81 of the Act, he was taken in custody by Mr. Tukaram Jadhav, and he was asked to deposit the penalty amount or furnish the surety, but on failure to do so, in terms of Section 42 of the Code of Criminal Procedure, he was taken in custody and was produced before the Magistrate within 24 hours. The morning Magistrate released him on bail of Rs. 5000/- and the case is pending in the Bhoiwada Court, (Regular Case No.18 of 2008, PS/12).

The order also record that on 23/07/2013, it was necessary to file an affidavit, but no such affidavit is filed and this created misunderstanding in the Court, and on this account, he is found to be guilty and therefore a show cause notice was issued to him as to why, he should not be penalized and finally by the order passed on 20/02/2024, imposed a fine of Rs.2000/- upon him.

18. We are astonished by the approach of the Respondent authorities, as what was expected by this Court, pursuant to the order dated 14/08/2013, was an inquiry, into the act of dereliction of duty/misconduct as per the Service Rules, but instead, recording that no evidence has come forth except that of the complainant and her husband, no finding of guilt in that regard is recorded against Mr. Jadhav, but only for not filing of the affidavit, which invited a wrath from the Court, he has been fined in the sum of Rs. 2000/-.

19. We fail to make out as to whether the respondent authorities have failed to understand the implications of the directions issued by this Court or despite understanding, the same has ignored it by passing the impugned order and imposing fine upon Mr.Jadhav

only for the act of non-filing of the affidavit in compliance of our order. In regards to the charges levelled for conduct of the inquiry, the evidence of witness nos.6 and 7, is completely ignored and the action of Mr. Jadhav, is found to be justiciable, as Mr. Chandrakant Vannam, had failed to pay the fine and therefore, he was required to be detained and was produced before the Magistrate on the next date, when he was released, on furnishing bail bond of Rs. 5000/-.

20. The moot question, that ought to have determined during the departmental inquiry, which the Court expected the Department to ascertain, was whether the action of Assistant Police Inspector, Mr. Tukaram Jadhav, was in accordance with law, but unfortunately, in perfunctory manner, the issue stand concluded even by the superiors, either intentionally or in sheer ignorance of the court's directives.

The Station Diary indicate that the LAC was registered by invoking Section 33(T) r/w Section 131 of the Maharashtra Police Act, 1951.

21. Section 33 is the power to make rules and regulations of traffic and for preservation of order in public place and sub-section (1) thereof contemplate that the Commissioner with respect to any of the matters, specified in the sub-section, the District Magistrate, with respect of any of the said matters and the Superintendent of Police, with respect to the matters falling under the clauses specified therein, make, alter or rescind rules or order not inconsistent with the Act and as far as clause (t) is concerned, it is a provision for making rules for guarding against injury to person and property in the construction, repair and demolition of buildings, platforms and other structure from which danger may arise to the passengers, neighbours or the public.

*Ashish*



From reading of Section 33, one thing is evident that the said provision confer the power conferred on the respective authorities, including the Commissioner, the District Magistrate and the Superintendent of Police, to make rules pertaining to the subjects covered therein, and as far as clause (t) is concerned, it is the power of the District Magistrate, who may make, alter, or rescind rules or orders in relation to its subject.

We however, do not find any Rule or Order made in regard to item (t).

Sub-section (2) of Section 33, has set out that the power so exercised shall be subject to the control of the State Government and its previous sanction.

Moreover, Section 33 also set out the procedure to be followed, while making such Rules and the manner in which the rules shall be made, rescinded or altered.

22. Section 131 prescribe the penalty for contravening the rules under Section 33 and it contemplate different scenario for contravening the rules made under different clauses of Section 33 and whoever contravenes any Rule or Order made under Section 33, or abates the commission of any offence under clause (a) shall on conviction be punished with imprisonment for a term which may extend to 8 days or fine, which may extend to (Rs.1250/- or with both), if the abatement of commission of the offence is for the Rule issued under clause (d), (g) (h) (i), sub-clause (i), (ii) of clause (r) or clause (u) of subsection (1) of Section 33 or for those prescribed under clause (i)(a) .

There is no specific mention of acting in contravention of Rule/order made under clause (t), but even assuming that it is covered by clause (r) of Section 131, as contravention of any Rule or order made under Section 33, it contemplates imprisonment for the term which may extend to eight days, or with fine. It is imperative that the punishment in form of imprisonment or which may extend to Rs.1250/- fall upon a person, by imposition of fine shall be only when he is prosecuted and tried in the manner set out in Section 151 (A).

Section 151 (A) of the Act reads thus:

**151A. Summary disposal of certain cases.**

(1) A Court taking cognizance of an offence punishable under section 117, or under sub-clauses (iii), (iv) or (v) of section 131, may State upon the summons to be served on the accused person that he may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum, not exceeding two thousand rupees, as the Court may specify.

(2) Where an accused person pleads guilty and remits the sum specified, no further proceedings in respect of the offence shall be taken against him.

.. We must also take note of Section 151 of the Act, which vests discretion in the police and we must reproduce the said Section:-

**“151 Prosecution for certain offences against the Act to be in the discretion of the Police.**

*It will not except in obedience to a rule or order made by the State Government or by the competent authority, be incumbent on the Police to prosecute for an offence punishable under Sec. 117, 119, 131, 134, 137, 139, 140 or 144 when such offence has not occasioned serious mischief and has been promptly desisted from on warning given.”*

23. From the reading of the scheme as contained in Section

33 r/w Section 131 and Section 151 (A) of the Bombay Police Act, we fail to understand as to how the power was exercised by respondent no.1 in arresting the petitioner no.2, as the offence under Section 131 do not warrant any arrest and the reason that since the petitioner no.2 fail to deposit the fine or furnish bond, he was remanded to police custody clearly depict of the arbitrary exercise of the power by him.

Even if assuming that there was power of arrest, it did not make it imperative for a police officer to effect the arrest and from the police diary, where the entries are made, it is clearly recorded that since the petitioner was booked under Section 33(T) in LAC No.451/2012, he was required to pay the fine prescribed, but he refused to pay the fine and also refused to avail the other remedies, under the law explained to him and hence he was arrested.

What is more disturbing is, when we directed to investigate the conduct of this officer i.e. Respondent No.1, who has arrested the petitioner no.2 by applying the rules governing his service condition, by adopting a perfunctory approach, which is placed before us through the order, passed by the Additional Commissioner of Police, he has been only found guilty of not filing the affidavit in time and therefore, subjected to penalty of Rs.2000/-.

24. We had already expressed our anguish in no uncertain words in our order dated 14/08/2013, specifically by recording that the allegations against the police officers are taken very lightly and casually and the citizens are not believed as a matter of course and here is a classic example, when our observations made on 14/08/2013, are proven to be correct, by the approach adopted by the

*Ashish*

respondents, in imposing the fine of Rs. 2000/- upon the API Mr. Tukaram Jadhav, as a outcome of disciplinary inquiry for the serious charges of irregularity being adopted by him and for acting in derogation of Section 149 of Cr.P.C, and effecting the arrest with malafide intention, though cross NCs were registered in respect of the same incident. Whether, the conduct of the petitioner no.1 and 2 did amount to injury to the complainant, or whether it posed any danger to the passengers, neighbors, is not at all even attempted to be ascertained and the case came to be registered in which the petitioner no.2 was arrested.

25. On behalf of the respondent, the learned APP has urged that the constructions carried out by the petitioners posed danger as the iron angles erected protruded outside the room of Mrs. Jagdevi Bhagode and therefore, she called the control room, which directed mobile no.1, Wadala Truck terminal Police Station to visit the spot.

The workers on the site, along with the owner came to be charged under Section 115 r/w Section 117 of the Maharashtra Police Act, which makes the offences cognizable under Section 79, which permit any police officer without an order from Magistrate and without the warrant to arrest any person committing, in his presence any offence, punishable under Section 117.

The requirement of this Section is the exercise of power to arrest, when certain offences is committed in his presence and this was specifically one of the charge levelled against the delinquent that the offence was not committed in his presence, as he never went on the spot.

The petitioner No.(1) also lodged an NC complaint against Jagdevi Bhagode and it is the case of the respondent, that she refused to sign it. Notice was given under Section 149 Cr.P.C to Mrs. Jagdevi Bhagode and Chandrakant was charged under Section 33(T) r/w 131 of Mumbai Police Act, and was produced before the Magistrate, where it pleaded not guilty and the case was transferred to Metropolitan Magistrate Bhoiwada, where it is pending. It may be true that the case may be investigated, but the petitioners had approached this Court seeking compensation in addition to the quashing of the LAC case against the petitioner no.2 and in any case, in the wake of death of the Petitioner No.2, the case has abated.

The claim in the petition is therefore, now only restricted to payment of compensation for the unlawful arrest, and since we have formed an opinion that the arrest was completely unwarranted and the power under Section 79 could not have been exercised by the respondent no.2, since the offence was not committed in his presence and moreso, for committing an offence under Section 115, which operates on a completely different footing as it punishes an act of committing nuisance in or near street, public place, public place of resort, by throwing any dust, ashes refuse or rubbish as to cause annoyance, it is only on conviction, a person can be punished with fine which may extend to Rs.1200/-, which definitely did not permit the respondent no.2 to recover the amount of fine from the petitioner no.2 though it is the case of the respondents that other accused persons, i.e. the workers from the site on deposit of Rs. 1200/- as fine were released.

The fine to be imposed by way of penalty under Section

117, for contravening the provisions of Section 99 to Section 116 can be imposed only on conviction, and cannot be sought to be deposited by the police officer.

26. We express that the case of arrest of the Petitioner No.2, in above circumstanced is a classic example of the abuse and misuse of the powers by the police officials and for their act, the petitioners had to suffer and we have noted that despite our direction, no action contemplated through disciplinary proceedings is initiated against the respondent no.1. Since the criminal proceedings have now been abated on the death of petitioner no.2. however, for the harassment being suffered even by the petitioner no.1, his wife, on account of the unlawful arrest of her husband, which was nothing, but an abuse of power, we deem it appropriate to award compensation of Rs. 1,00,000/- to be paid by the respondent no.6, State of Maharashtra to the petitioner no.1, within period of 8 weeks from today. It is open for the State to recover the compensation from respondents, who are found to be responsible for the unlawful arrest, which shall include the respondent no.1, in specific.

We leave it to the good conscience of the higher ups in the Police Department to ensure compliance of our orders dated 14.08.2013, if it is permissible and possible after more than a decade.

Rule is made absolute in the aforesaid terms.

**(MANJUSHA DESHPANDE, J)**

**(BHARATI DANGRE, J.)**