

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.1090 OF 2015

Harihar Prasad Ramsubhag Mishra
and Another.

.. Petitioners

Vs.

The State of Maharashtra.

.. Respondent

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Shri Sachin Chandan i/b Shri Suresh Debey for the Petitioners.

Shri K.V. Saste, APP for the Respondent State.

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CORAM : A.S. OKA & A.A.SAYED, JJ

DATED : 7TH OCTOBER 2016

P.C.

1. The learned counsel appearing for the Petitioners submits that the First Information Report (FIR) has been registered against the Petitioners only because a demand made by the Police was not complied with by the Petitioners. The said contention is baseless for the simple reason that in this Petition filed on 11th March 2015, the said contention has not been raised.

2. The second contention is that there is a gross delay in registration of the FIR. The third contention is that the Petitioners are owners of the goods vehicle and their responsibility is to deliver the goods and take charges for transport of the goods. The submission that they are no way concerned with the offences alleged against them.

3. The FIR is registered at the instance of the Deputy Superintendent of Police, Anti Corruption Bureau (ACB). It is stated that certain information was received by the ACB on 3rd November 2012 from an informant. On the basis of the said information, he along with his team visited the Octroi Post at Vashi. The information received on 6th November 2012 was that the four goods vehicle have left the Vashi Octroi Post and the goods vehicles were being taken to the Steel Yard in the area of Cotton Green.

4. Accordingly, instructions were given to keep a watch on the said vehicles. After the said vehicles were found, the same were brought to Mankhurd Police Station and the goods were weighed and the panchanama was drawn. Thereafter, the information was sought as to who were the officers posted at the Octroi Post at Vashi. The information was sought regarding A forms, B forms, the record relating to the weight of the goods and invoices, etc. The allegation in the FIR is that ultimately, it was revealed that in case of three goods vehicles, fabricated invoices were produced. Moreover, incorrect description of the goods and incorrect weight was mentioned. The FIR records that a report was submitted by the Superintendent of Police, ACB, Thane to the Director General of Police, ACB, Mumbai, for seeking guidance. The said report was submitted on 14th December 2012. On 16th May 2013,

an order was issued by the Director General of Police, ACB, directing the registration of the offence. The said FIR is registered for the offences punishable under Sections 420, 467, 498, 471 read with 34 of the Indian Penal Code against the Petitioners and others. The persons shown as accused in the FIR are the owners of the goods vehicles, drivers and the Octroi Agents.

5. Looking to the assertions made in the statement of the Deputy Superintendent of Police on the basis of which the FIR was registered, we are of the view that at this stage, it is impossible to record a conclusion that the Petitioners are no way concerned with the offence. According to us, investigation will be necessary. In view of what is stated in the statement of the Deputy Superintendent of Police, at this stage, there is sufficient explanation for delay.

6. Therefore, at this stage, the power to quash FIR cannot be exercised. The Petition is rejected. However, we make it clear that the observations made in this order are only for the purposes of deciding whether at this stage, interference is called for. None of the observations made in this order shall be construed as the findings on merits and all contentions in that behalf are kept open to be agitated at the appropriate stage.