

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1254 OF 2016

Mrs. Nancy Heman Madappullay

..Petitioner.

V/s.

The State of Maharashtra and Anr.

..Respondents.

Mr.Anjani Kumar Singh i/b. M/s.Lex Remedeum for the petitioner.

Mr.K.V. Saste, APP for the respondent-State.

Mr.Hitesh S. Nevashe for respondent No.2.

**CORAM : NARESH H.PATIL AND
A.M.BADAR, JJ.**

DATED : 1ST APRIL, 2016

P.C. :-

1. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioner / accused is praying for quashing of the F.I.R. bearing No.18/2016 registered with Nagothane police station, District Raigad for offence under punishable section 407 read with 34 of the Indian Penal Code

at the instance of the informant Sunil Kumar Sajjan Kumar Sharma. The petitioner is also praying for release of three vehicles owned by her which are involved in the present offence along with loaded materials.

2. Heard learned counsel for the petitioner / accused as well as respondent No.2 / informant. Perused the F.I.R. as well as affidavit filed by respondent No.2 / informant.

3. According to the prosecution case, reflected from the F.I.R. lodged by respondent No.2 – Branch Manager of Anil Cargo Ltd., on 25th February, 2016 had engaged New Niranjana Transport, Kalamboli for transportation of iron pipes from Maharashtra Seamless, Sukeli Pipe Nagar, District Raigad to New Thermal Power Project at Navali District, Cuddalore in Tamil Nadu State. It is the prosecution case that three trailers of the present petitioner were hired and materials i.e. iron pipes costing Rs.36,97,011/- were loaded on those trailers at Maharashtra Seamless, Sukeli Pipe Nagar, District Raigad on 28th February, 2016. However, the carriers i.e. the present petitioner has committed criminal breach of trust in respect of those pipes worth more than Rs.36 lacs and has not reached

them to the destination.

4. Learned counsel appearing for the petitioner as well as respondent No.2 unanimously submit that consignment loaded in the three trailers could not reach the destination because of bonafide misunderstanding and apprehension of theft of materials. They further argued that the delay in delivery of consignment was due to misunderstanding and mis-communication. They both unanimously stated that dispute which is predominantly civil in character is settled and respondent No.2 / informant is not desirous of prosecuting further in the matter.

5. On the last date of hearing i.e. 31st March, 2016 the petitioner / accused was present in person and her learned counsel submitted that the matter is compromised. Today, Sunil Kumar Sajjan Kumar Sharma i.e. respondent No.2 / informant is present in person. He is identified by his learned counsel. Upon inquiry, respondent No.2 / informant submitted that as the matter is compromised, he does not desire further action in the F.I.R. lodged by him with the police.

6. We have also heard learned APP for the State.

7. Upon hearing the submissions and on perusal of the F.I.R., we are of the considered opinion that the dispute is predominantly of civil character. There was some delay in delivery of loaded materials which were sought to be transported from Maharashtra Seamless, Sukeli Pipe Nagar, District Raigad to New Thermal Power Project at Navali District, Cuddalore in Tamil Nadu State. The parties have settled the matter outside the Court. The chances of conviction, even if the investigation is allowed to proceed further, are remote. No public law element is involved in the instance case. It is reported that the trailers are detained at the police station. For all these reasons, we are of the considered view that this is a fit case to exercise extraordinary powers of this Court for quashing the F.I.R. in order to avoid abuse of process of the Court. At the same time, we are of the opinion that the police machinery was set in motion by respondent No.2 / informant as the petitioner failed to deliver the materials to its destination in Tamil Nadu State. As such, it would be appropriate in such a situation to direct both the parties to jointly pay an amount of Rs.25,000/- towards

donation to the Police Welfare Fund. Hence the order.

- (i) The petition is allowed;
- (ii) The F.I.R. bearing No.18/2016 registered at the instance of respondent No.2 Sunil Kumar Sajjan Kumar Sharma with Nagothane police station, District Raigad for an offence punishable under section 407 read with 34 of the Indian Penal Code against the petitioner, is quashed and set aside subject to the condition of the petitioner and respondent No.2 jointly depositing an amount of Rs.25,000/- towards donation to the Police Welfare Fund. They shall submit a receipt thereof with the Registry within a period of one week from today;
- (iii) Needless to mention that no further order is required for release of the three trailers in view of quashing and setting aside of the F.I.R. under which those are detained or seized;

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)