

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.380 OF 2016

Mr.S.V.Kotwal i/b Mr.Ajit M. Savagave for the
applicant
Ms M.H.Mhatre, APP for the respondent No.1
Mr.Chetan Patil for respondent No.2

2 By this application under section 482 of the Code of Criminal Procedure, 1973, the applicant is praying for quashing the FIR registered for the offences punishable under sections 454, 457 and 380 of the Indian Penal Code. The second respondent is the wife of the applicant. The second respondent is the first Informant. The impugned FIR was registered on 29th March 2016. In the statement on the basis of which the FIR was registered, the second respondent stated that she is residing along with the applicant who is an Architect working in a

company. Her case is that on 27th March 2016 her mother was staying with her. In partition her mother had received a certain amount. On 27th March 2016 at 10.00 p.m., she along with her mother left the matrimonial home as the mother was looking for acquiring a premises. It is alleged that when they came back in the night at 9.00 p.m., they found that the house was locked. The case made out is that cash amount of Rs.42,00,000/- was found to be stolen which was in the denomination of Rs.500/-. Several ornaments were stolen. The First Information Report was registered against unknown accused.

3 The case of the prosecution appears to be that the applicant is the accused and recovery of the stolen property was made at the instance of the applicant on 29th March 2016 along with a car of Maruti make which is more particularly described in the Panchnama dated 29th march 2016.

4 The case made out by the applicant is that the second respondent approached the police due to misunderstanding and communication gap and in fact, the second respondent tendered apology to the police.

5 The second respondent has filed an affidavit dated 7th April 2016. She has stated that neither herself nor her mother made any statement to implicate the applicant. She stated that due to some misunderstanding and communication gap, that she approached the police and that the police have

wrongly implicated the applicant.

6 Today, the applicant has filed an affidavit stating that the cash amount and the ornaments of gold listed at item Nos.A to E in paragraph 2 of the said affidavit belong to the second respondent and the vehicle described as item No.F belongs to him. He has stated that he has no objection for return of property described in item Nos.A to E to the second respondent.

7 The second respondent has also tendered an affidavit in which she has stated that the vehicle belongs to her husband-applicant and therefore, she has no objection for giving custody to the applicant.

8 The learned counsel for the applicant and the learned counsel for the second respondent state that both the parties are personally present in the Court and in fact, they are residing as husband and wife and there is no subsisting dispute between them.

9 Thus, the stand of the second respondent in the affidavit dated 7th April 2016 is that due to misunderstanding and communication gap that she approached the police. She has stated that she herself and her mother never gave any statement to the police against the applicant.

10 Thus, going by the statements made on oath, it appears that the registration of FIR was due to the

misunderstanding and communication gap between the applicant and the second respondent-wife.

11 There is one more aspect of the matter. On 29th March 2016, going by the Panchnama on record, the husband himself voluntarily produced cash amount and the ornaments. Not only that he produced the said articles but he produced Maruti make car about which there is no allegation of theft. The case of the applicant is that he is the owner of the said car.

12 We have perused the statement of the second respondent on the basis of which FIR was registered. We have also perused the statement of the mother-in-law of the applicant. In both the statements they have stated that when an attempt was made by the second respondent to contact the applicant on his cell phone, the same was switch off. Both the second respondent and her mother stated that some unknown person had stolen the property and in fact, FIR was registered against an unknown person based on the statement of the second respondent. We have perused file of investigation. We find that there is no material on record to show that even a prima facie case is made out of applicability of section 354 of the said Code.

13 Moreover, the applicant and the second respondent are now residing together as husband and wife.

14 Considering the peculiar facts of the case and

considering the material on record which we have carefully examined, we are of the view that the offence complained of will not have any serious impact on the society and that in the facts of the case, the offence is of private nature. Now the applicant and the second respondent are residing together as husband and wife. Continuation of criminal proceedings will cause undue hardship to both of them. Moreover, the possibility of conviction of the applicant is remote and bleak. Therefore, in the light of the law laid down by the Apex Court in the case of Gian Singh versus State of Punjab and another¹, a case is made out for quashing the FIR.

15 We accept the statements made by the applicant and the second respondent in the affidavits tendered today which are on record and marked 'X-1' and 'X-2' for identification. In terms of the statements made therein, the property will have to be returned by the police to the applicant and the second respondent.

16 Hence, we dispose of the application by passing the following order:

- (I) Rule is made absolute in terms of prayer clause (b);
- (II) We direct the Investigating Officer to return the property mentioned at item Nos.A to E of the paragraph 2 of the affidavit dated 12th

April 2016 of the applicant;

(III) We direct the Investigating Officer to return the vehicle which is described in the item No.F of the affidavit of the applicant;

(IV) Needless to add that the properties as aforesaid shall be returned after taking out photographs and drawing formal panchanama;

(V) Application is disposed of on above terms.

(P.D.NAIK,J.)

(A.S.OKA,J.)