

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2889 OF 2016

Dr. Manoj Bhavarilal Chopda. .. Petitioner

Vs

The State of Maharashtra and Another. .. Respondents

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Shri Mohan Tekavde along with Mrs. Swati Tekavde, Shri Nimeet Sharma, Shri Datta Papal and Shri Pinto Chaurasia for the Petitioner.

Shri K.V. Saste, APP for the State Respondent No.1.

Shri Datta Pawar for the Respondent No.2.

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

DATED : 31ST AUGUST 2016

PC.

1. Rule. The learned APP waives service for the first Respondent and the learned counsel appearing for the second Respondent waives service. Forthwith taken up for final disposal.

2. The Petitioner is a Medical Practitioner by profession. He has obtained a Post Graduate Degree M.D. in General Medicine. He has been granted a super speciality degree of D.M. in Cardiology. The prayer in this Petition is for quashing the First Information Report for the offence punishable under Section 380 of the Indian Penal Code. The second Respondent is the first informant. The second Respondent is having a shop at the Chhatrapati Shivaji International Airport, Mumbai. In the shop, various items such as hand-baggages, mobile

accessories, belts, shoes etc. are being sold. On 16th January 2016, one of the employees of the second Respondent while taking an inventory, noticed that one leather belt was short and could not be accounted for. The CCTV footage showed that one person picked up the said belt and kept in the pocket of his blazer. On the basis of the CCTV footage, the Petitioner was identified.

3. The offence was registered under Section 380 of the Indian Penal Code. The case made out in the Petition is that there is a settlement between the Petitioner and the second Respondent. The Petitioner has paid a sum of Rs.10,500/- to the second Respondent being the price of the belt and an additional amount of Rs.10,500/- being the fine.

4. Shri Yogesh Subhash Chauhan, who lodged the FIR on behalf of the second Respondent has filed an affidavit accepting that the aforesaid amounts have been received by the second Respondent and recording that there is a settlement between the Petitioner and the second Respondent.

5. We must note here that the learned APP has shown to the Court the footage on the basis of which the offence was registered.

6. In the Writ Petition, apart from stating that the Petitioner has obtained D.M. in Cardiology, he has stated that the Petitioner has established his own Heart Institute in Nashik and he is running his own Trust at Nashik by the name “Nashik Hriday Mitra Charitable Trust”. It is pointed out that the Petitioner is also running Ambulances at Nashik. The Petitioner’s wife is also a Doctor by profession and she is the Director and Administrative head of the Magnum Heart Institute. The Petitioner stated that the Petitioner’s son is a student of the Second Year M.B.B.S. Course. It is stated that the heart institute of the Petitioner is in existence since last 21 years. The Petitioner was working as an Honorary Cardiologist at Government Superspeciality Hospital at Nashik and Saibaba Hospital at Shirdi since last 10 years.

7. As evidenced from Exhibit-C to the Petition, the Petitioner has paid the sum of Rs.21,000/- to the second Respondent on 10th August 2016 which amount was accepted by the second Respondent.

8. The offence under Section 380 of the Indian Penal Code is attracted when theft is committed in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of the property. The ingredients of the theft are incorporated under Section 378 of the IPC. The offence of theft can be made out

when a person intending to take dishonestly any movable property out of the possession of any person without consent of that person moves that property in order to such taking.

9. Looking to the factual aspects which have narrated earlier and the fact that the second Respondent has accepted the aforesaid amount of Rs.21,000/- from the Petitioner, it is not possible to accept that there was any dishonest intention on the part of the Petitioner. Even from CCTV footage, the said conclusion cannot be drawn. Therefore, the offence under Section 380 of the IPC is not made out.

10. We may note here that the Petitioner has on his own paid a sum of Rs.1,00,000/- by way of donation to a very reputed Trust by the name “Naam Foundation” which works for the betterment of farmers in the drought-prone areas in the State of Maharashtra and especially in Marathwada region. The receipt issued by Naam Foundation is placed on record along with a copy of the entry in the Bank Account of the Petitioner showing the transaction of Rs.1,00,000/-.

11. Apart from the fact that no offence under Section 380 of the IPC is made out, in view of the affidavit marked “X1” for identification, a case is made out for quashing the FIR.

12. Therefore, in view of the law laid down by the Apex Court in the decision in the case of *Gian Singh v. State Bank of Punjab*¹, this is a fit case to exercise the power under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR.

13. Accordingly, we pass the following order:

ORDER :

(a) The Rule is made absolute in terms of prayer clause

(b) which reads this:

“(b) That this Hon'ble Court to issue a Writ of Certiorari/Mandamus and/or a Writ in the nature of Certiorari/Mandamus and/or any other appropriate writ, order and/or directing calling for the records and proceedings of the Petitioner case and after going into the legality and propriety thereof be pleased to quash and set aside F.I.R. No.18 of 2016 registered with Sahar Police Station, Mumbai, under section 380 of the IPC at the instance of Complainant lodged by Respondent No.2 against the Petitioner and Petitioner be set at liberty.”

(b) All concerned to act upon an authenticated copy of this order.

1 (2012) 10 SCC 303

(A.A. SAYED, J)

(A.S. OKA, J)