

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1217 OF 2015

Dinesh Jaminadas Divecha	Applicant
versus	
State of Maharashtra through	
Senior Inspector of Police,	
Borivali Police Station, Mumbai	Respondent

Mr.Prajit Suhas Manjrekar for Applicant.
Dr.F.R.Shaikh, APP, for Respondent-State.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 20th April 2016

PC :

1. Heard learned counsel appearing for the Applicant. The Applicant is the first informant at whose instance First Information Report ('FIR') No.254/2015 has been registered complaining of commission of an offence punishable under Sections 454, 457 and 380 of Indian Penal Code. In the statement of the Applicant on the basis of which FIR is registered, he has stated that he is residing in a flat at Borivali (West), Mumbai alongwith his wife and daughter. On 8th May 2015, the Applicant along with his family members left their house to go on tour to West Bengal, Darjiling and Sikkim. It is alleged that when he along with his family members came back on 20th May 2015, he found that the cupboards in the bed

room were open. He found that certain ornaments and cash was stolen. it is alleged that property worth Rs.17.90 lakh was stolen.

2. The Applicant himself has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 ('Code') for quashing the FIR. The first ground in this application is that though the Police are suspecting that the Applicant's driver has committed the offence, according to the Applicant, the driver is honest and hardworking. It is alleged that though this fact was informed by the Applicant to the Police, they are insisting on custody of the driver and, therefore, the driver left the job. The second ground is that though on 17th August 2015, the Applicant addressed a letter to the Senior Inspector of Police, Borivali Police Station and to the concerned Deputy Commissioner of Police stating that the driver is not involved in the offence, the Police are still insisting on arrest of the driver. The third ground is that the Applicant is suffering from neurological illness as well as migraine. It is stated that on 19th March 2014, the Applicant has undergone surgery of cervical spinalon.

3. We have heard learned counsel for the Applicant and learned APP for the State. Learned APP produces file of investigation. The supplementary statement of the Applicant recorded on 4th June 2015 is on record in which the Applicant

has stated that he was suspecting that his driver may have committed the offence. The learned APP on instructions of the investigating officer states that after investigation, Police have a strong suspicion that Applicant's driver may have committed the offence and the said driver is absconding. We find from the file that some investigation has been carried out of the cellular phone record of the driver.

4. The learned APP states that now the presence of the Applicant for recording statement at the Police Station will be required only if there is a recovery of the stolen articles for the purposes of identification of the articles. The file discloses that 'A' summary report has been prepared by the Senior Police Inspector of Borivali Police Station, but the same is not yet filed as efforts are being made to trace the accused.

5. We fail to understand as to how the Applicant can seek quashing of FIR which records information of commission of a serious offence. The property worth Rs.17.90 lakh of the Applicant has been allegedly stolen. The Applicant cannot decide in what manner the Police should carry out the investigation. If on investigation, the Police have a suspicion against the Applicant's driver, the Police have right to investigate the offence against the suspect, especially in the light of the fact that in the supplementary statement, the Applicant himself had expressed a suspicion about involvement of his driver.

6. The fact that the Applicant is suffering from various ailments is no ground to quash the FIR at his instance. In fact, we are of the view that filing of such an application at the instance of first informant is nothing but an abuse of process of law. Hence, there is no merit in the application and the same is rejected.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST