

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1158 OF 2010

1. Dr. Prashant S. Sawant)
Age 45 years, Indian Inhabitant,)
Occ: Doctor, R/at 602-A & B,)
Wing, Bldg. No.29, Tilak Nagar,)
Bharat Co-op. Hsg.Soc. Ltd. Tilak)
Nagar, Chembur, Mumbai 400 089.)
2. Mr. Shanawaz Khan)
Age 30 years, Indian Inhabitant)
Occ : Service (Engineer) R/at 701)
B Wing, Bldg. No.29, Tilak nagar,)
Bharat Co-op. Hsg. Soc. Ltd. Tilak)
Nagar, Chembur, Mumbai 400 089.)
3. Mr. Kishore Bhandary)
Age 35 years, Indian Inhabitant,)
Occ: Service (Sales Manager))
R/at 303 B Wing, Bldg. No.29, Tilak)
nagar, Bharat Co-op. Hsg. Soc. Ltd.)
Tilak Nagar, Chembur, Mumbai)
400 089.)
4. Mr. K. Harish)
Age 39 years, Indian Inhabitant,)
Occ: Service (C.A.) R/at 205,)
B Wing, Bldg. No.29, Tilak Nagar,)
Bharat Co-op. Hsg. Soc. Ltd. Tilak)
Nagar, Chembur, Mumbai 400 089.)
5. Mrs. Sophia P. Sawant,)
Age 45 years, Indian Inhabitant,)
Occ. Service (CEO), Res./at 602 A &)
B Wing, Bldg. No.29, Tilak Nagar,)
Bharat Co-op. Hsg. Soc. Ltd. Tilak)

- Nagar, Chembur, Mumbai 400 089.)
6. Sunilkumar Dave)
 Age 35 years, Indian Inhabitant,)
 Occ. Service (I T Manager),)
 R/at 702B,B Wing, Bldg. No.29, Tilak)
 Nagar,Bharat Co-op. Hsg. Soc. Ltd.)
 Tilak Nagar, Chembur,)
 Mumbai - 400 089.)
7. Mohan Lokre)
 Age 41 years, Indian Inhabitant,)
 Occ. Service (Motorman Indian)
 Railways) Res./at 301,)
 B Wing, Bldg. No.29, Tilak nagar,)
 Bharat Co-op. Hsg. Soc. Ltd. Tilak)
 Nagar, Chembur, Mumbai 400 089.)
8. Mrs. Yukta Mohan Lokre,)
 Age 35 years, Indian Inhabitant,)
 Occ; Service Res/at 301,)
 B Wing, Bldg. No.29, Tilak Nagar,)
 Bharat Co-op. Hsg. Soc. Ltd. Tilak)
 Nagar, Chembur, Mumbai 400 089.).. Petitioners

Vs.

1. The State of Maharashtra)
 Through Public Prosecutor, High)
 Court, Bombay.)
2. Mr. S.U.Narawane,)
 The Senior Inspector of Police,)
 Tilak Nagar Police Station,Mumbai.)
3. Mr. Jitendra S. Sonawane)
 The Investigating Officer & Assistant)
 Police Inspector, Through Public)
 Prosecutor, High Court, Bombay.)
4. Miss Poonam Ashok Jaikar,)
 Age adult, Indian Inhabitant,)

Occ: unknown R/at C/o.)
Mrs.Kumud Ashok Jaikar, Flat)
No.605 A Wing, Building No.29,)
Tilak nagar, Chembur, Bombay-89.).Respondents

Mr.Milan Desai i/b. Mr. Y.R.Shah, for the petitioners.
Mr.A.R.Kapadnis, APP, for the State.
None for respondent No.4 (complainant)

**CORAM: RANJIT MORE &
SMT.SADHANA S.JADHAV, JJ.**
DATE : 11th September, 2017.

JUDGMENT : (Per Smt. Sadhana S. Jadhav, J.)

By this Petition, the petitioners are seeking the relief of quashing of the First Information Report on the basis of which Crime No.19 of 2009 is registered against the petitioners by Tilak Nagar Police Station on 21.1.2009.

2. Notice was issued to respondent No.4. On 11.6.2010, the Hon'ble Division Bench (B.H.Marlapalle & Anoop V.Mohta JJ), had observed that Advocate Shri Ramesh Chheda had caused his appearance for respondent No.4 when the petition was called out on 22.4.2010, but did not appear on 11.6.2010. Hence, Rule was issued and the interim relief was granted in terms of prayer clause (f). Advocate Shri Chheda had also filed his Vakilpatra on behalf of respondent No.4.

3. The facts in a nut shell are as follows :-

(a) The petitioners herein are the occupants of “B” Wing of the redevelopment project of Building No.29 of Tilak Nagar Bharat Co-op. Housing Society Ltd. at Chembur. The original residents reside in “A” Wing.

(b) Respondent No.4 herein had entered into an agreement for sale in September 2005. That Shop No.10 admeasuring 217 sq. ft. in “B” Wing would service as the access/entrance to the “B” Wing during the pendency of the completion of the project. Till today, the building is incomplete. Since December 2006, the residents of “B” Wing used the said premises as an access to their Wing.

© In March, 2008, the residents of the “B” Wing had noticed that the respondent No.4 and her mother who happens to be residing in “A” Wing and was the Chairperson of the original society of the old residents had blocked the said access. Subsequently, at the request of the residents, the access was opened. In August, 2008, a second attempt was made by the respondent No.4 to block the access of the residents of “B” Wing. It had transpired that the builder had not consented to the same and he had made it clear to the petitioners that respondent No.4 had only paid a token amount of Rs.11,000/- at the time of agreement only because the premises were to be used as an access till the completion of the project. The residents of “B”

Wing were, therefore, constrained to file Long Cause Suit No.2759 of 2008 in the Bombay City Civil Court in October 2008 for removal of the obstruction and other incidental reliefs. The Notice of Motion was decided in favour of the petitioners by way of interim relief by an order dated 9.11.2008. The said order was confirmed by the High Court vide order dated 4.5.2009.

(d) It is pertinent to note that in the course of hearing of the Petition before the High Court, the Municipal Corporation had clarified to the petitioners that the licence produced by the respondent no.4 under the Shops & Establishment Act at the time of hearing of the Petition, was not issued by them. The petitioner No.5 had lodged a complaint against the respondent No.4 on the basis of which C.R.No.26 of 2009 is registered against the respondent No.4 under Sections 464, 466, 467, 471 and 474 of the Indian Penal Code.

(e) It is further pertinent to note that the order passed by the City Civil Court, which was confirmed by the High Court, had been breached by the respondent No.4 as the access was not given to the residents of "B" Wing. The petitioners had brought it to the notice of the Senior Inspector of Police, Tilak Nagar Police Station about the breach committed by

respondent No.4. The petitioners were only advised that since the Hon'ble Court has passed orders in their favour, they could execute the said order by opening the blocked access. The petitioners had sought for protection of the police, however, since there was paucity of availability of the police, the petitioners were directed to proceed on their own.

(f) On 17.1.2009, the petitioners and the other residents of “B” Wing had decided to open the blocked access. The police were summoned by dialing “100”. Soon the relatives of respondent No.4 appeared on the scene along with an activist from Maharashtra Navnirman Sena and a personal friend of respondent No.4 and requested the police constables to arrest the petitioners on the ground that they had committed trespass through shop No.10 which was purportedly owned by them. At the request of the police, the petitioners had been to the police station. It is further pertinent to note that the petitioner No.1 happens to be a medical practitioner and was not present at the spot when the blocked access was being removed by the other petitioners and residents of “B” Wing. The respondent No.3 had registered a non-organizable case against the petitioners under Section 427 of the Indian Penal Code.

(g) On 19.1.2009, the petitioner Nos.1 and 3 to 8 had received a notice from the respondent No.2 asking them to remain present before the

Investigating Officer. On 20.1.2009, the Petitioner No.1, 3 to 8 had been to the police station as the I.O., did not have sufficient time on the earlier occasion. The petitioners were served with a notice under Section 149 Cr.P.C. The petitioners had filed Notice of Motion in the Bombay City Civil Court in the pending Suit bringing the said facts to the notice of the Court.

(h) On 21.1.2009, the petitioner Nos. 1 to 4 were arrested by Tilak Nagar Police Station. In fact, the petitioner No.1 happens to be a medical practitioner. The others are Engineer, Chartered Accountant and the Sales Manager. Upon reading the recitals of the first information report, it was revealed to the petitioners for the first time that the respondent No.4 had alleged a theft of an amount of Rs.15,000/- and an iron table four days ago i.e. on 17.1.2009. The crime was being investigated by respondent No.3 seeking recovery of the implements/tools used by the petitioners in damaging the wall. The petitioner was hand-cuffed by respondent No.3. The petitioner Nos. 2 to 4 were forced to denude their clothes at the time of interrogation. The petitioners were forced to admit the offence to save themselves from the penal treatment given by the respondent No.3. It is the contention of the petitioners that the petitioner Nos. 2 to 4 were given brutal treatment in the cell on 23.1.2009. The petitioners were produced before

the Incharge Magistrate when they were granted judicial custody. On 27.1.2009, the petitioners were enlarged on bail only after they had spent four nights in Thane Central Prison. The other petitioners were granted pre-arrest bail. On 28.1.2009, the City Civil Court had passed an interim order granting police protection to the petitioners to remove the said obstruction. Respondent Nos. 2 and 3 had committed breach of the said order.

4. The petitioners had brought all the abovementioned facts to the notice of the Commissioner of Police. It is in these circumstances that the petitioners are seeking relief of quashing of the first information report.

5. In fact, this Court cannot be oblivious of the fact that the petitioners who happen to be respectable persons in the Society, had in fact approached the Court of law and had obtained necessary orders only to exercise their right of access to their residential premises and in fact it was the first informant who was in breach of the order and had used the muscle power as well as political pressure for getting the offences registered against the petitioners. It appears that unfortunately, the respondent Nos. 2 and 3 had succumbed to the political pressure and had not only caused prejudice to the petitioners but there was an apparent abuse of power at the hands of respondent Nos. 2 and 3. It was the duty of the respondent Nos. 2

and 3 to respect the orders of the Court. However, the same was deliberately ignored by them thereby causing prolonged incarceration to the respectable persons of society.

6. In the case of **Gian Singh v. State of Punjab (2012) 10 SCC 303**, the Hon'ble Apex Court has observed as follows :-

“61.... the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

...

In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law....”

In the present case, it is apparent on the face of the record that continuation of the criminal proceedings would tantamount to abuse of process of law.

7. In the case of **Rajiv Thapar and others vs. Madan Lal Kapoor (2013) 3 SCC (Cri.) 158**, the Hon'ble Apex Court has laid down the guidelines for exercising power under Section 482 of Cr.P.C

“The following steps should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings raised by an accused by invoking the power vested in the High Court under Section 482 CrPC :

1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality ?

2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false ?

3. Step three : whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant ?

4. Step four : whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice ?

If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

8. The present case would squarely fit into the guidelines laid

down by the Hon'ble Apex Court in the case of **Rajiv Thapar** (cites supra) and, therefore, we are more than convinced that the criminal proceedings on the basis of which Crime No.19 of 2009 is registered at Tilak Nagar Police Station deserve to be quashed and set aside. The Petition is allowed in terms of prayer clause (a). Rule made absolute accordingly. The petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]

(RANJIT MORE, J.)