

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL WRIT PETITION NO.1035 OF 2017**

Asif Ali Siddiqui, Advocate.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. V. D. Patil & Mr. Makarand Kale i/b M. P. Vashi & Associates for Petitioner.

Mr. K. V. Saste, Addl. P. P. for State.

Ms. Riddhi D. Shah a/w Ms. Monika Malkani for Respondent No.3.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.

DATE :- 11 APRIL, 2018

P. C. :-

1. The above Writ Petition has been filed for quashing of the FIR being C.R.No.549 of 2015 lodged with the Vakola Police Station on 30/11/2016 for the offences punishable under Sections 419, 420, 465, 467, 488 and 471 read with Section 34 of the IPC. The said FIR has been lodged by the Respondent No.3 herein.

2. The gravamen of the allegations against the Petitioner is that the Petitioner has identified the deponent of two Affidavits-cum-Indemnity Bonds which are executed by one Shaikh Ishaque Abdul Aziz. It is required to be noted that the deponent Shaikh Ishaque Abdul Aziz is a co-accused with the Petitioner. It is on the basis of the said documents that the said Shaikh Ishaque Abdul Aziz is laying a claim to a plot of land to which property the first informant lays a claim as being the property of the housing society in which society the first informant is the Chairman. The deponent Shaikh Ishaque Abdul Aziz claims to have acquired title through one of the legal heirs of the original owners. It is the allegation against the Petitioner that the Petitioner has, by identifying the deponent Shaikh Ishaque Abdul Aziz, facilitated the said crime. The allegation against the Petitioner is also as regards his details which have been mentioned below his signature which he has mentioned for identification of the deponent. Insofar as the Affidavit is concerned, which is sworn before Mr. D. R. Kurgiri, Notary, Government of India and entered in the Notarial Register at Sr.No.1891/16 dated 03/03/2016, the Petitioner has mentioned his name and his other details which include his registration with the Bar Council of Maharashtra and Goa in hand. A perusal of the

handwritten portion discloses that what has been mentioned there is not legible and it is only because the Petitioner claims that it is his writing, that one can say that the name of the Petitioner has been mentioned with the other details. Insofar as the Affidavit-cum-Indemnity Bond which bears Notarial Registration No.459/2016 and which is notarized before the Notary U. C. Shukla, the name of the Petitioner is typewritten with his other details including his address and the Bar Council Registration number which is also typewritten. It is on a reading of the said details which have been typewritten that one can presume that the details which have been mentioned in the handwritten portion, are the same details which appear in the typewritten portion as otherwise independently it is not possible to decipher the details in the handwritten portion.

3. *Prima facie*, the manner in which the portion has been handwritten in the Affidavit-cum-Indemnity Bond dated 03/03/2016, the intention appears to be to conceal the identity of the Advocate who has identified the deponent, which can also be inferred from the fact that the Bar Council Registration number is also sought to be written in an illegible manner. The said document, therefore, *prima-*

facie creates a suspicion as regards the intention of the Petitioner who is an Advocate who has identified the deponent. As indicated above, it is on the basis of the said two Affidavits-cum-Indemnity Bonds that the claim is sought to be laid to the property in question.

4. During the course of the hearing of the above Petition, the learned Addl. P. P. drew our attention to the material which was uncovered in the investigation. One such document is a letter received from a nationalized bank wherein the Petitioner has his account which letter indicates substantial transfer of money from the Petitioner's account in favour of one Naomi Miranda who is the accused no.1. The said letter, in a way, can be said to incriminate the Petitioner insofar as the offences alleged against the Petitioner are concerned. The Petitioner seems to have taken a personal interest insofar as the claim made in respect of the property is concerned. We do not deem it appropriate to make any further comments on merits, lest it affects the Petitioner at the trial. We, however, do not deem this a fit case to exercise our jurisdiction under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India for quashing of the FIR *qua* the Petitioner. The Petition is accordingly dismissed.

5. At this stage, the learned Counsel for the Petitioner seeks continuation of the ad-interim relief. In the facts and circumstances of this case, the said prayer is rejected.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)