

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 1154 OF 2021

Sarfaraz Tajammul Husain Ansari]
Age-42 years, Occ.- Govt. Servant,]
R/at – House No. 823, Taj Mohammad]
Compound, Gaibi Nagar, Bhiwandi,]
Dist.- Thane-421302.] .. Petitioner

Vs.

1. State of Maharashtra]
(Through Shantinagar Police Station,]
Bhiwandi.)]
2. Shri Zishan Ayaz Momin]
Age-29 years, Occ.- Service,]
R/at – House No. 27, Bangal-Pura,]
Near Bhiwandi City Police Station,]
Bhiwandi, Dist.- Thane-421302.] .. Respondents

Mr. Salman Khan for the Petitioner.

Mr. V. B. Kondedeshmukh, APP for the Respondent-State.

Respondent No.2 present in Court.

CORAM : S. S. SHINDE & MANISH PITALE, JJ.

Judgment reserved on : 8th MARCH, 2021.
Judgment pronounced on : 24th MARCH, 2021.

JUDGMENT (Per Manish Pitale, J.)

1. By this Writ Petition, the Petitioner is seeking quashing of FIR dated 26.03.2019 registered at Shantinagar Police Station, Bhiwandi, Dist.-Thane bearing C.R. No. 336 of 2019 for the offence punishable under Section 379 of the Indian Penal Code. The present Petition has been filed for quashing of FIR with consent of Respondent No.2 (original Complainant).

2. The Petitioner is working with Bhiwandi Nizampur City Municipal Corporation. Respondent No.2 had caused the aforesaid FIR to be

registered on the basis that in March, 2019 when working as supervisor of a company called Eagle Infrastructure Limited India engaged in supplying drainage pipes to the said Municipal Corporation, he found that 58 such pipes were missing. The said Respondent believed that the aforesaid pipes had been stolen and on that basis the said FIR stood registered. The police initiated investigation upon registration of the said FIR.

3. According to Respondent No.2, upon further inquiry into the matter, it came to his knowledge that the said missing pipes were not stolen but they were utilized by the Municipal Corporation in the on going work. On this basis Respondent No.2 realized that the FIR stood registered mistakenly against the Petitioner.

4. The Petitioner has approached this Court stating that the present case could not be stated to be a case of theft at all as the said alleged missing pipes were in fact utilized for the work of Municipal Corporation of which the Petitioner is an employee. Accordingly, the affidavit of Respondent No.2 was filed along with this Petition at Exhibit 'E' stating the facts as they came to the knowledge of Respondent No.2, after registration of FIR and for giving consent for quashing of the present FIR. An affidavit was additionally tendered in the Court dated 08.03.2021, the contents of which are similar to the earlier affidavit placed on record with the Petition.

5. The relevant portion of the affidavit of Respondent No.2 filed along with this Petition reads as follows:

3. I further say that original complainant is working as a supervisor in EAGLE INFRASTRUCTURE INDIA LTD ULHASNAGAR from the past January 2018.

4. I further say that the Bhiwandi Nizampur Corporation has given tender to the EAGLE INFRASTRUCTURE INDIA LTD. for working and

supplying drainage pipes to the jurisdiction of Bhiwandi Nizampur Municipal Corporation.

5. I further say that it is the duty of me to supervise the material by which he is getting order as per the request made by Bhiwandi Nizampur Municipal Corporation.

6. I further say that on 16/03/2019 at about 1:00 pm me was doing investigation about the 115 Pipes which is about to used for the purpose of drainage line at near Rehan Shaadi Hall, Kidwae Nagar, Talao Road, Bhiwandi, Dist.-Thane.

7. I further say that on 23/03/2019 at about 5:30 pm it came to the knowledge of the contractor Shri Rao that out of the said 115 Pipes, 58 Pipes were missing and thereafter they have checked on the CCTV footage regarding who has committed theft thereafter it came to the knowledge of contractor that one dumper was using for the commitment of this theft.

8. I further say that thereafter I went to the Shantinagar Police Station and lodge the FIR.

9. I further say that thereafter on a very same day it came to the knowledge that the said 58 Pipes were used by the Bhiwandi Nizampur Municipal Corporation as per the order of officer of Bhiwandi Nizampur Municipal Corporation.

10. I further say that thereafter it is clearly specified that all the above mention pipes are not theft but they are used as a day today course of the Bhiwandi Nizampur Municipal Corporation.

11. I further say that thereafter there is no theft is the instant offence.

12. I further say that thereafter by mistake I had lodge the FIR before the Shantinagar Police Station and who are arrested are not involved and consent in the instant crime.

13. I further say that I am giving the present Affidavit before this Hon'ble court just to clear the fact which is not clearly mention in the FIR.

6. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolves their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the

1 2012 (10) SCC 303

offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as 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.

7. Applying the ratio of the aforesaid Judgment of the Hon'ble Supreme Court to the facts of the present case, it becomes clear that the FIR in question can be quashed. This is because even as per Respondent No.2 (original Complainant), the FIR stood registered on a mistaken belief of the said Respondent that the missing pipes had been stolen, while they were found to be actually utilized for the work of Municipal Corporation. We are of the view that continuance of further proceeding in pursuance of the said FIR would be of no consequence as the chances of conviction of the Petitioner in such facts and circumstances are bleak and remote. Therefore, the present Writ Petition deserves to be allowed.

8. Accordingly, the Writ Petition is allowed in terms of prayer Clause (a). Rule made absolute in above terms.

[MANISH PITALE, J.]

[S. S. SHINDE J.]