

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.831 OF 2021

Bahadursingh B. Rathod

...Petitioner

Versus

1. The State of Maharashtra

2. Bhagwanaram N. Rabari

3. Ansari Salman Jamil @Babubhai

...Respondents

Mr. Rishi Bhuta i/b Mr. Tarun Sharma, for the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondent No.1 – State.

Mr. Sharad Goswami, for the Respondent No.2.

Mr. Ashish Dubey, for the Respondent No.3.

PSI – A. N. Kale, L.T. Marg Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 5th AUGUST, 2021

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner seeks quashing and setting aside of the order dated 29th August 2020, passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, in M.A. No.808 of 2020, as well as order dated 19th December 2020, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in

Criminal Revision Application No.385 of 2020 and prays that the property recovered i.e. cash amount of Rs.39,50,000/- be handed over to the petitioner, on terms and conditions, as this Court may deem fit and proper.

3. Learned Counsel for the petitioner submits that the petitioner had sent respondent No.2 - Bhagwanaram N. Rabari (original accused) to fetch cash of Rs.70,00,000/- from the respondent No.3 - Ansari Salman Jamil @Babubhai. He submits that since the respondent No.2 (original accused) fled with cash of Rs.70,00,000/-, the petitioner lodged an FIR/complaint as against the respondent No.2. He submits that during investigation, cash of Rs.39,50,000/- was seized from the respondent No.2 out of Rs.70,00,000/- stolen by him. He submits that the learned Judge ought to have seen that the police had given their no objection for handing over the monies so seized to the petitioner and so had the respondent No.3 - Ansari Salman Jamil @Babubhai. He submits that only because the respondent No.3 was not party to the application filed before the Sessions Judge for return of money, the monies were not handed over to the petitioner.

4. Learned Counsel for the respondent No.2 (original accused) states that the respondent No.2 - Bhagwanaram N. Rabari has no objection

if the said amount of Rs.39,50,000/- is handed over to the petitioner. Similarly, the respondent No.3 - Ansari Salman Jamil @Babubhai who is present through video conferencing has no objection if the said amount of Rs.39,50,000/- is handed over to the petitioner. Learned Counsel for the respondent No.3 has handed over a xerox copy of the Aadhar Card of the respondent No.3. The same is taken on record.

5. Perused the papers. It appears that the respondent No.2 was working with the petitioner and that the petitioner had asked the respondent No.2 to collect the cash of Rs.70,00,000/- from the respondent No.3. It appears that the respondent No.2 collected the said monies, however, did not hand over the same to the petitioner, pursuant to which the petitioner lodged an FIR i.e. C.R.122 of 2020 with the L.T. Marg Police Station, Mumbai, alleging offences punishable under Sections 408, 420 and 34 of the Indian Penal Code. During the course of investigation, respondent No.2 was arrested and out of Rs.70,00,000/-, Rs.39,50,000/- was seized from the respondent No.2. The petitioner filed an application for return of the cash before the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. The said application was rejected by the learned Metropolitan Magistrate vide order dated 29th August 2020. The petitioner challenged the said order in Revision and the learned Additional Sessions Judge, City Civil and

Sessions Court, Greater Mumbai, vide order dated 19th December 2020 dismissed the said revision application, essentially on the premise that the respondent No.3 - Ansari Salman Jamil @Babubhai was not a party to the revision application made by the petitioner for return of the property. In the present petition, the petitioner has made Ansari Salman Jamil @Babubhai as party respondent No.3.

6. Learned Counsel for the respondent No.3 - Ansari Salman Jamil @Babubhai states that the respondent No.3 has no objection if the said money is handed over to the petitioner. The respondent No.3 is also present through video conferencing. On being asked, he states that he has no objection to the monies being handed over to the petitioner. Similarly, the prosecution also has no objection if the said amount of Rs.39,50,000/- is returned to the petitioner.

7. Accordingly the petition is allowed. The impugned order order dated 29th August 2020, passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, in M.A. No.808 of 2020, as well as order dated 19th December 2020, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Criminal Revision Application No.385 of 2020, are quashed and set aside. The

petition is allowed on the following terms and conditions:-

ORDER

(i) The Investigating Officer/Concerned Officer is directed to hand over cash of Rs.39,50,000/-, seized in the said case to the petitioner on furnishing proof of his identity;

(ii) Before the money is handed over to the petitioner, the petitioner shall give an Indemnity Bond of Rs.39,50,000/- in the trial Court stating therein, that he will bring in the said amount, in case the occasion, so arises.

8. The Petition is allowed and disposed of in above terms.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.