

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 378 OF 2021

Minto Singh Wasir.

... Petitioner.

V/s.

The State of Maharashtra and others.

... Respondents.

Mr.Anurag Ghag with Mr.Ashish Dubey for the Applicant.
Mr.K.V.Saste, APP for the Respondent- State.

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**NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE :

27 October 2021.

P.C. :

Heard the learned counsel for the parties.

2. The Applicant has challenged the FIR No.21/2020 registered with N.M.Joshi Police Station under sections 380, 454 read with 34 of Indian Penal Code. The learned counsel for the Applicant states that the correct number of FIR is 29/2021.

3. In the FIR lodged on 7 February 2020, the Respondent-informant has stated that a case was filed in the Small Causes Court in respect of rented premises and an *ex parte* decree was passed in

favour of Respondent No.3/ Complainant who filed an Execution Application No.487/2019. The Small Causes Court by order 24 October 2019 directed the bailiff to break open the lock. Accordingly possession was given to Respondent No.3. According to Respondent No.3, on 23 November 2019, the Applicant and his employees questioned through telephonic conversation as to how the notice was issued and how locks were changed. According to Respondent No.3, the employees of the Applicant informed Respondent No.3 that they will not regard the order of the Court and will break open the lock. It is then narrated that three persons, stated to be the employees of the Applicant, in the presence of the Applicant, loaded the goods in the room in a tempo brought by them and also took some material which belonged to Respondent No.3.

4. The learned counsel for the Applicant sought to contend that the Applicant is not directly involved and that the Applicant has given in writing that he is taking away his own material.

5. Both these contentions cannot be accepted as in the FIR, which will have to be considered as it is, it is specifically stated that Applicant was present and under his instructions the goods were removed. Secondly, though it is stated that he gave his statement in writing that he is taking away his material, the allegation in fact is that he took away the material belonging to Respondent No.3. The arguments of the Applicant before us are on merits of the case on the defence of the Applicant. At this stage it cannot be said that there is

no material whatsoever to proceed further and that this case is a rarest of rare case for invocation of Section 482 of Code of Criminal Procedure, 1973 for quashing the FIR.

6. The Application is accordingly rejected.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)