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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.320 OF 2021

Ankit Prakash Jain .. Applicant
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Omneel A. Jadhav, a/w. Mr. Keral Mehta, for the Applicant.

Mr. K.V. Saste, APP, for State.

Mr. Ranjit Pawar, i/b. Mr. Deepan Dixit, for Respondent No.2.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 8 OCTOBER 2021.

P.C:-

Heard learned Counsel for the parties and Mr. K.V. Saste,
APP, for State.

2. By this criminal application filed under Section 482 of the
Criminal Procedure Code, the Applicant has prayed for the following
relief:

(a) *This Hon'ble Court be pleased to quash and set aside
the entire proceedings bearing C.C. No.PW/212/2021*

arising out of F.I.R. bearing C.R. No.05/2021 registered with Dr. D.B. Marg Road Police Station, Mumbai, for the offences punishable u/s. 380 of the I.P.C. in the interest of justice.

3. Respondent No.2 deals in silverware. He owns a jewellery shop at Girgaon, Mumbai. On his complaint, an FIR was registered on 4 January 2021, wherein he stated that his shop is at the inner lane, where only regular customers used to come. He did not have any employee working with him. He had not fixed any CC TV camera. According to Respondent No.2, he knew the Applicant sometime in the year 2014, when the Applicant was dealing in wholesale silverware. The Applicant had stopped the business of silverware and started the imitation jewellery business. Respondent No.2 became friendly with him and quite often the Applicant used to be with Respondent No.2. In the year 2018, Respondent No.2 noticed that certain silver articles were missing and, according to him, from the year 2018 to October 2019, silverware and other jewellery articles worth Rs.86,080/- were missing and were stolen by the Applicant. The charge-sheet has been filed, wherein statements of one Laxman Kasturi, who used to clean the shop of Respondent No.2, and Satish Shenoy, a photographer, who used to visit the shop of Respondent No.2, were recorded, wherein they stated that the Applicant used to be in the shop with Respondent No.2.

4. Learned Counsel for the Applicant submitted that the material put against the Applicant at the most give rise to a suspicion and nothing more and it is quite obvious that, on the basis of such material, no conviction is possible and also keeping such prosecution pending would be a needless harassment and with the stigma the Applicant is not be able to conduct his profession and business and not be able to earn his livelihood. Learned APP pointed out to the two statements referred to above, so also the learned Counsel for Respondent No.2. Learned Counsel for Respondent No.2 submitted that only the Applicant had access to the shop.

5. From the statement of Respondent No.2 it is clear that the place, where alleged stolen articles were kept, was in shop and Respondent No.2 also had stated that customers used to visit the shop. It is, therefore, not a correct submission that only the Applicant had an access to the shop. Considering the material placed before us, which were referred to above, it is clear that the case against the Applicant does not travel beyond the threshold of suspension. There is no recovery from the Applicant. This is a case where the allegations made in the FIR, even if they are taken at the face value and accepted, do not prima facie make out a case against the Applicant.

6. In these circumstances, the contention of the Applicant

that the parameters now settled by the Apex Court governing the exercise of jurisdiction of this Court under Section 482 of the Code of Criminal Procedure Code are attracted to this case, will have to be accepted. Accordingly, the application is allowed in terms of prayer clause (a), which reads as under:

- (a) This Hon'ble Court be pleased to quash and set aside the entire proceedings bearing C.C. No.PW/212/2021 arising out of F.I.R. bearing C.R. No.05/2021 registered with Dr. D.B. Marg Road Police Station, Mumbai, for the offences punishable u/s. 380 of the I.P.C. in the interest of justice.

7. The application is, accordingly, disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)