

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.61 OF 2021

Phiroz Ibrahim Khan ..Petitioner
vs.
The State of Maharashtra and Anr. ..Respondents

Mr. Kuldeep Patil, for the Petitioner.
Ms. Saili Dhuru, for the Respondent No. 2.
Mr. V.B. Konde-Deshmukh, APP for the State.

CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.

JUDGMENT RESERVED ON : 10th AUGUST, 2021
JUDGMENT PRONOUNCED ON : 23rd AUGUST, 2021
(THROUGH VIDEO CONFERENCING)

JUDGMENT : (Per N.J.Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 is filed for the following relief.

(a) This Court may pass appropriate order and quash and set aside Criminal Case No. Police Case/W/ 2402987/2011 on the file of learned Additional Chief Metropolitan Magistrate, 24th Court, Mumbai which arose out of F.I.R bearing C.R.No. 209 of 2009 registered with the Malvani Police station, Dist. Mumbai.

3. We have extracted the prayer clause on purpose. The petitioner who is arraigned in the aforesaid case for the offences punishable under section 465, 467, 468, 471, 420 read with 34 of Indian Penal Code, 1860 (the Penal Code) has invoked the writ and inherent jurisdiction of this Court on the premise that the dispute between the petitioner and respondent No. 2 Abdul Kadar Shaikh, who lodged first information report No. 209 of 2009, is amicably resolved.

4. Upon perusal of the report under section 173 of the Code of Criminal Procedure, 1973 (the Code), it becomes evident that apart from the petitioner there are two other co-accused who have been sent for trial and three persons who are absconding and thus not sent for trial. From the perusal of the petition and the prayer clause extracted above, one gets an impression that the petitioner has approached this Court for quashment of the C.C.No.PW/2402987/2011 as if he is sole accused.

5. To add to this, the petitioner had filed an application under section 482 of the Code being Criminal Application No. 626 of

2011 which came to be withdrawn with liberty to take out appropriate proceeding as the chargesheet was lodged when the said application came up before the Court on 21st December, 2011. We wish the petitioner would have made a clean breast of the nature of the proceeding and disclosed better particulars of the parties to C.C.No.PW/2402987/2011, quashment of which is sought. Be that as it may.

6. Mr. Kuldepp Patil, learned counsel for the petitioner and Ms. Saili Dhuru, the learned counsel for the respondent No. 2 made a joint statement that the petitioner and respondent No. 2 have amicably resolved the dispute. The respondent No. 2 has sworn an affidavit. The petitioner has also filed an affidavit/undertaking in terms of the directions of this Court disclosing the cases registered against him.

7. It was submitted that in view of the settlement arrived at between the petitioner and respondent No. 2, no fruitful purpose would be served by continuing the prosecution.

8. Paragraph Nos.2 to 4 of the affidavit of Abdul Kadar

Shaikh – respondent No. 2, read as under.

2/ I say that aforesaid Criminal Writ Petition came up for hearing before this Court (Coram: S.S.Shinde vs. M.S. Karnik) on 23rd October, 2020 and this Court by order directed me to disclose all the details of cases registered against me and as well as to file copies of Order's passed by this Court for quashing of said case. This Court has also directed me to file undertaking stating that I will not further indulge in commission of any kind of offences in future. In view of the aforesaid, I am filling the aforesaid affidavit/undertaking.

3/ I say that on 17th November, 2007 out of business rivalry there was an attempt to eliminate me by my rivals and at my instance the FIR bearing C.R.No.I-335 of 2007 was registered with Kandivali police station for offences punishable under section 307 and 120(b) read with 34 of IPC.

4/ I say that as my rivals were not successful in eliminating me, they decided to file false cases me in various police stations at Mumbai.

9. In the affidavit dated 31st October, 2020 the petitioner has disclosed the following first information reports registered against him.

4/ I say that accordingly in the year 2009 the following F.I.R.'s were registered against me at various police stations at the instances of my rivals as follows:

(i) FIR bearing No. 216 of 2009 registered with Santacruz police station for the offences punishable under section 465, 467, 468, 471, 406 and 420 read with 34 of IPC.

(ii) FIR bearing No. 209 of 2009 registered with Malvani police station for offences punishable under section 465, 467, 468, 471, 460 and 420 read with 34 of IPC.

(iii) FIR bearing NO. 298 of 2009 registered with Kandivali police station for offences punishable under section 406, 420 read with 34 of IPC.

(iv) FIR bearing No. 331 of 2009 registered with Oshiwara police station for offences punishable under section 465, 467, 468, 471, 406 and 420 read with 34 of IPC.

10. The petitioner has further affirmed that the first information report No. 298 of 2009 was quashed and set aside by this Court in Criminal Appeal No. 1466 of 2010 by order dated 29th March, 2010 (Exhibit A to the affidavit). The first information report No. 216 of 2009 was quashed and set aside by order dated 28th October, 2010 in Criminal Application No. 4888 of 2010 (Exhibit B) and first information report No. 331 of 2009 was quashed and set aside by order dated 9th June, 2011 in Criminal Application No. 307 of 2011 (Exhibit C).

11. We have carefully perused the material on record including the report under section 173 of the Code and its accompaniments in C.C.No.PW/2402987/2011. We are afraid to accede to the submission on behalf of the petitioner and respondent No. 2 that the dispute between them is of a private nature. From the tenor of the first information report it becomes

abundantly clear that the petitioner had induced respondent No. 2 to part with money on the promise that two plots will be allotted to the petitioner in Nakul Sahakari Gruhnirman Society, Malvani. To the extent of failure of performance and consequent cheating, even on the assumption that the intention of the petitioner was dishonest since inception of the transaction, the matter would have properly fell within the realm of a private dispute arising out of commercial transaction. What, however, accentuates the situation is the fact that the petitioner, upon being pestered by respondent No. 2 handed over two files containing forged and fabricated documents pertaining to one Virendra Mahendra Panchal, who was purportedly shown as the transferor. As the respondent No. 2 entertained suspicion, he approached the Vigilance Officer of MHADA and thereupon it transpired that those documents were forged and fabricated. The communication dated 27th August, 2009 annexed to the report of police reveals that the Chief Vigilance Officer, MHADA had recommended the Dy. Commissioner of Police to register the first information report as the documents were found to be forged and fabricated.

12. Had it been a case of the transaction between the petitioner and respondent No. 2 not being materialized and in the process the allegations of preparation of false documents made, we would have taken a view that it still forms part of a private dispute arising out of commercial transaction. However, what transpired during the course of investigation further exacerbates the situation. The investigation revealed complicity of five more persons apart from the petitioner. It was revealed that Virendra Panchal who was shown to be the purported transferor had also created false documents and a series of transactions took place and money changed hands. Thus, apart from the petitioner Mr. Virendra Pacnahl and Abrar Hussain were arrested and prosecuted. Whereas Rajesh Deshmukh, Tanveer Sayyed, Ulhas Kulkarni were shown as absconding accused. The chargesheet indicates how documents were allegedly forged and false representation were made to dupe unsuspecting persons.

13. It is true that the power of the High Court under Article 226 of the Constitution and 482 of the Code is of wide amplitude. If the Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of

the Court or that the ends of justice require that the criminal proceeding should be quashed, in exercise of the wholesome power, the High Court is entitled to quash the proceeding. The overarching principle is that the Court proceeding ought not be permitted to degenerate into a weapon of harassment or prosecution. Likewise, if in the light of the settlement between the parties, the continuation of the prosecution would be a futile exercise, with the possibility of prosecution ending in a conviction extremely unlikely, the Court would be justified in quashing the proceeding lest it becomes unnecessary burden on the criminal justice system. The nature of cases in which this power can be legitimately exercised was enumerated by the Supreme Court in the case of *Gian Singh vs. State of Punjab*¹, wherein the Supreme Court also elucidated the nature of the inherent powers of the Court and the circumstances in which it can be exercised. It was inter alia observed as under:

“61. But 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 offences 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 resolved their entire dispute. In this category

1 (2012) 10 Supreme Court Cases 303.

of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

14. Reverting to the facts of the case we find that three of the prosecutions having somewhat identical accusations against the petitioner were quashed by this Court, in the applications referred above (Exhibit A, B, C to the affidavit of the petitioner).

15. This factor, in our view, can hardly be construed in favour of the petitioner. It indicates that there was an element of continuity and repetition in the alleged conduct of the petitioner. Moreover, in the case at hand, the charge of making false documents and forgery of record does not fall within the realm of the private dispute between the petitioner and respondent No. 2. The investigation has revealed complicity of co-accused. The fact

that the entire exercise was designed to allegedly obtain plots/tenements from the public enterprise i.e. MHADA aggravates the offences.

16. In the aforesaid view of the matter, the fact that the petitioner approached this Court as if he was the sole accused in C.C.No.PW/2402987/2011, the proceedings in which were sought to be quashed and set aside, dissuades us from considering the prayer of the petitioner despite the no objection by the second respondent. If we were to accede to the substantive prayer of the petitioner, extracted above, the unintended consequences thereof would have been quashing of the said proceeding in its entirety qua co-accused Nos. 2 and 3 as well, who are not before this Court and with whom the first informant has not entered into any settlement.

17. We part with the hope that the parties realize that full and true disclosure of facts never operates to their prejudice.

Hence, the following order.

ORDER

a] The petition stands dismissed.

b] Rule is discharged.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)