

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

CRIMINAL APPLICATION NO.841 OF 2021

Harsh Alpesh Shah & Ors.

.... Applicants

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr.Tarun S. Sharma, Advocate for Applicants.
- Mr.K. V. Saste, APP for State/Respondent No.1.
- Mr.Jigar Shah i/b. Ansu Jaiswal, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.**

DATE : 9 DECEMBER 2021

P.C. :

. Heard learned counsel for the parties. Taken up for disposal.

2. The Applicants have filed this Application seeking to quash the FIR bearing C.R.No.221 of 2021, registered at Bhayandar West Police Station under section 353, 109, 323, 504 r/w 34 of the Indian Penal Code.

MANUSHREE
V
NESARIKAR
Digitally
signed by
MANUSHREE
V
NESARIKAR
Date:
2021.12.17
15:26:14
+0530

3. The Applicant No.1 is 26 years old. The Applicant Nos.2 and 3 are sons of Applicant No.4. The incident that led to filing of the FIR was that the part of the building where the Applicants were residing had collapsed and the authorities had come on the site to clear the rubble. The reason for quashing this FIR is the consent of Respondent No.2, the informant. The learned counsel for Respondent No.3 has reiterated consent of Respondent No.2 and the statement made by him on affidavit.

4. The power to quash the FIR under the extra-ordinary jurisdiction by this Court in furtherance of interest of justice is recognized and for that reasons circumstances can be seen in totality. Apart from the consent of the Respondent No.2, which is a relevant factor, from the perusal of the FIR shows that ingredients of the offences are not made out.

5. The FIR alleges that on 18 May 2021, the Respondent No.2 was working in the Encroachment Department of Mira-Bhayandar Municipal Corporation. He went to the site since he received a news that part of the building Shivam Co-operative Housing Society had collapsed. There was confusion and panicky on the spot that occupants were trying to recover their ornaments etc. from the rubble. The Applicants have stated to have gone inside the rubble to recover their valuables. The Applicant No.1 had gone to

the first floor. According to the informant, the Applicant was trying to remove the ceiling fan. On been accosted, the Applicants entered into the scuffle with the informant and disrupted the public duty to be performed by the informant. This is the gist of the FIR, which is sought to be quashed.

6. The bare perusal of the FIR shows that the incident was of collapse of a building and there was likelihood of remaining part collapsing. The Applicants and the other were in a state of confusion, panicky and agitation and it would have difficult in that state of mind to think and believe rationally and in that background, the scuffle taken place. It is accepted by the Respondent No.2 in his affidavit that confusion and panicky was the reason of the scuffle.

7. Therefore as stated by the Respondent No.2 in his affidavit and as can be seen from the FIR, the ingredients of offence are also not made out.

8. Therefore keeping the prosecution pending in respect of Applicants, would not be in interest of justice. In light of what is stated by Respondent No.2 in his affidavit, it is likely that the prosecution itself will not result in conviction.

9. Therefore taking overall view of the matter, we find that

the Application deserves to be allowed and is accordingly allowed in terms of prayer clause (c) which reads thus;

“(c) This Hon’ble Court be pleased to quash the C.R.No.221 of 2021 registered with the Bhayandar West Police Station on such terms and conditions as this Hon’ble Court may deem fit and proper and;”

10. The Applicants will pay amount of Rs.10,000/- each to the Welfare fund or any similar Welfare activity of the Mira Bhayandar Municipal Corporation, within a period of four weeks and submit a receipt in the reply to be placed on the record of the Court.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)