

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.581 OF 2020

Bhausahab Shivaji Bhosale .. Petitioner
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Ritesh Thobde, for the Petitioner.

Mrs. S.D. Shinde, APP, for State.

Mr. Ishrat Ali Khan, for Respondent No.2.

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CORAM: NITIN JAMDAR &
N.R. BORKAR, JJ.

DATE : 11 JULY 2022.

P.C:-

Heard learned Counsel for the parties.

2. By this 19application filed under Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India, the Petitioner is seeking to quash the First Information Report registered vide C.R. No.380 of 2019 with Paud Police Station, Pune Rural, District Pune. The Respondent-Complainant filed the FIR under Section 379 of the Indian Penal Code. According to the Respondent-Complainant, the Respondent works in a private company. She had

purchased one flat along with the Petitioner and documents showing ownership rights and possession. She has stated that she had met the Petitioner, who was a teacher, and had developed a friendship. On 28 July 2019, when the Respondent-Complainant had entered the flat, she found that her suitcase was open and passport and gold ornaments were stolen. She filed a complaint that the Petitioner made duplicate key and stole the gold ornaments.

3. The learned Counsel for the Petitioner submitted that the Petitioner had earlier filed the FIR under Section 376 of the Indian Penal Code and, while bail proceedings were pending, this false FIR came to be lodged. The learned Counsel submitted that the incident has taken place in July 2019 and the FIR was lodged on 19 August 2019 and there is a delay in lodging the FIR, which shows that the FIR was filed with malafide intentions. The learned Counsel also contended that the flat was purchased in joint name and there is no illegality committed by the Petitioner nor any offence. The learned Counsel further contended that the Petitioner has filed a petition for restitution of conjugal rights in the Civil Court at Pune where the Respondent has appeared and filed vakalatnama styling herself as wife of the Petitioner. The learned Counsel submitted that if totality of circumstances are seen, the FIR is in abuse of process of law.

4. The learned Counsel for Respondent-Complainant submitted that in the vakalatnama that is filed by the Respondent-

Complainant, she had signed with her maiden name and that in any case vakalatnama by itself cannot show factum of marriage. He submitted that nothing is shown to demonstrate that there was marriage between the parties.

5. The scope of proceedings to quash the FIR is limited. The reference to the FIR filed under Section 376 is made to argue that the second FIR was malafide. However, second FIR cannot be considered as malafide, as both incidents could possibly occur. As regards delay in filing the FIR is concerned, it is a matter that can be explained. As regards joint ownership of the flat is concerned, that is stated so in the FIR itself. Further, the allegation of theft of the personal property of the Respondent-Complainant and, in that context, joint ownership could be of no consequence. The points urged, therefore, are matters for trial. No case is made out for quashing the FIR.

6. The writ petition is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)