

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

CRIMINAL WRIT PETITION NO. 707 OF 2020

Mahendra Jayprakash Jaiswal and ors.

....Petitioners

Versus

The State of Maharashtra and anr.

....Respondents

Mr. Suresh Sabrad a/w Mr. Amey C. Sawant, Ms. Neha Pare for the
Petitioners.

Mr. K. V. Saste, APP for the Respondent-State.

Mr Nikhil Patil i/b. Mr. Pradeep Patil, for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 5th APRIL, 2022.

P.C. :

1. The petitioners are before this Court with a principal prayer,
which is prayer clause (a) and the same reads thus :

- a) this Hon'ble Court be pleased to quash and set aside the charge sheet bearing No.I-193 of 2019 in Regular Criminal Case No.1104 of 2019 pending on the file of the Ld. Judicial Magistrate, First Class, Kalyan arising out of F.I.R. registered vide C. R. 153 of 2018 with Dombivli Police Station, Pune for the offences punishable u/s. 353 r/w. Section 34 of Indian Penal Code;

2. The matter was listed before this Court on 4th April, 2022. On that day, we heard learned counsel for the petitioners at length. Mr.Pradeep Patil, learned counsel for respondent no.2 was not present in this Court. In order to give one more and last opportunity to respondent no.2, the petition was adjourned today and learned counsel for the

petitioners had submitted that he would forward intimation in respect of adjourned date to the counsel for respondent no.2. Accordingly, the intimation was also forwarded to counsel appearing for respondent no.2. Today, learned counsel Mr. Nikhil Patil holding for learned counsel Mr. Pradeep Patil submitted that due to personal difficulty, learned counsel for respondent no.2 who is appearing for the officer of Kalyan Dombivli Municipal Corporation (hereinafter referred as “KDMC” for the sake of brevity) is not present before this Court. Learned counsel for the petitioners submitted that matter was heard yesterday at length and only to grant an opportunity to the counsel appearing for respondent no.2, petition was adjourned today. In this situation, we are not inclined to wait for respondent no.2.

2. The crux of submission of learned counsel appearing for the petitioners is that the lodgment of FIR against the petitioners and the proceedings initiated against the petitioners are not only abuse of process of law but it is also an act of clear disregard and in defiance to the order of this Court.

3. Considering the submission of learned counsel for the petitioners it would be useful to refer the certain materials placed on record. The perusal of copy of report lodged at instance of respondent

no.2, placed on record at page 181, shows that respondent no.2 is an employee of KDMC and, at the relevant time, he was attached to department of removal of encroachment. The perusal further shows that on 11th May, 2018, a notice was issued to three unauthorised holder of shop-lets to vacate their premises within 24 hours. In pursuant to the notice, on 14th May, 2018, respondent no.2 along with Ward officer Shri Parshuram Kumavat and some police staff approached the area namely Swami Vivekanand Road, Opposite Swami Samarth Math and these three shop owners namely Shree Shankar Sweet Mart, V.K. Electronics and Rakesh Grain Stores/Ashapura Stores were informed that pursuant to notice, they are required to vacate the premises immediately. At that point of time, the petitioners opposed the action. Petitioner no.1 uttered the words that “first kill us and then evict the shop-lets”. Petitioner no.1 then stated that he is a patient of heart ailment as well as blood pressure, and if any untoward incident takes place, the Corporation employees and other members would be responsible. In spite of repeated requests made to the petitioners, the petitioners paid no heed and refused to either come out of the shops or vacate the shops. As the petitioners resisted to vacate the shop-lets, the police staff forcibly removed these petitioners from the shop-lets and assisted the Corporation staff and the process of vacating the shop-lets was given effect to. Accordingly, a report was lodged

alleging that the petitioners deterred respondent no.2 and other staff from discharging their duties. The offence punishable under Section 353 read with 34 of Indian Penal Code was attracted against the petitioners.

4. Learned counsel for the petitioners submitted that a bare perusal of record would show that except orally refusing to vacate the premises, and uttering certain words, at the most would show helplessness and depression of the petitioners and apart from this act, no physical act of violence was committed by the petitioners. Counsel for the petitioners states that, on the contrary, the report clearly states that the petitioners were removed from their shops by the police staff using force. Learned counsel for the petitioners then invited our attention to the document placed on record Exh "M" at page 129. Perusal of this document shows that the designated officer and Ward officer of 'G' Ward of KDMC by exercising the power under Section 260(2) of Mumbai Municipal Corporation Act, 1888, passed the order of vacation of the premises. Our attention was invited to clause 3 of the order and the counsel for the petitioners submitted that designated officer by referring to the relevant provisions, directed the owner of shop Jaiprakash Jaiswal, to vacate the shop within the stipulated period of 15 days from date of order at his own costs. The said order is passed on 11th May, 2018. Learned counsel for the

petitioners vehemently submitted that when the order itself was providing the breathing period of 15 days to the shop owners, respondent nos.2 and 3 with other employees of KDMC in undue haste, approached the petitioners on the very day i.e. 11th May, 2018 in the evening and directed the petitioners to vacate the premises within 24 hours. Thus, the learned counsel for the petitioners submitted that the act of approaching the premises first on 11th May, 2018 and approaching the premises on 14th May, 2018 along with police staff was an act clearly in breach of the order of officer of the Corporation itself. It is also submitted by the learned counsel for the petitioners that there is absolutely no justification for respondent no.2 to approach the premises of the petitioners on 11th May, 2018 and directing shop owners i.e. the father of petitioner no.1 to vacate the premises within 24 hours. Counsel for the petitioners further submitted that the act of respondent no.2 is nothing but the patent misuse of the power. Learned counsel for the petitioners then invited our attention to copy of order passed by this Court in certain writ petitions. One of the petition viz. writ petition no.6046 of 2018 was filed at the instance of father of petitioner no.1 Jayprakash Jaiswal. The order of the designated officer of the KDMC was under challenge in the writ petition, and the Division Bench of this Court in its detailed Judgment and Order firstly referred to the proceedings initiated by these shop owners before

the competent Civil Court and in paragraph 17 of the order, the act of respondent no.2 and other employee is referred to and it reads thus :

13. However, unmindful of the contents thereof, the impugned order of 11-5-2018 was passed. Pertinently, that did not give any breather to the petitioner. On 14-5-2018, which was a Monday and when the petitioner was present in his shop premises along with his staff, the third respondent came with a demolition squad and police force. The demolition squad was accompanied by allegedly the Power of Attorney holder of the fourth respondent. Though the petitioner pleaded that the order of 11-5-2018 granted fifteen days' time to comply with the same, the KDMC maintained that it was giving the petitioner only 24-hours to remove the structure from the site and since the time had lapsed, the KDMC says that it was justified in coming at the site with the demolition squad and later on in demolishing the structure. It is thereafter that the petitioner claims that the entire belongings were thrown away and in an inhuman manner the order of demolition was implemented. Thus, this order of demolition violates not only the Division Bench Judgment of this Court but the Rule of Law itself."

An affidavit-in-reply was filed in this Court on behalf of the respondent-KDMC opposing the petition. The Division Bench of this Court, in strong words expressed its displeasure on the approach of the respondent-KDMC. It may be useful for our purpose to refer to these observations of the Division Bench and which reads thus :

24. It is therefore, strange that a responsible statutory authority like the KDMC goes to this extent and to depose in an affidavit filed in this Court contrary to its record. If the affidavit is indeed based on perusal of original records and files, then, from a reading thereof, we do not see how a statement of the nature referred by us hereinabove, can be made so boldly and, brazenly. Thus, the deponent of this affidavit, who is in his personal capacity a party-respondent to this writ petition, has made a totally false and misleading statement. This stand of the KDMC, as reflected in this affidavit, needs to be strongly deprecated. If the concerned Public Officials, who are Public Servants and the statutory or Public body as a whole is of the opinion that final and binding orders and directions of this Court can be so easily defied and with no consequences being visited on them, then, they are sadly mistaken.

5. It was not out of place to refer the ultimate terms of this Court in the order dated 26th June, 2018 in paragraph 29 at page 240. Being aggrieved by order dated 26th June, 2018 of this Court in bunch of the writ petitions, the respondent-KDMC and the landlords approached the Honourable Apex Court by filing special leave to appeals. The said special leave to appeals were dismissed by the Apex Court vide its orders dated 6th August, 2018 and 17th August, 2018. The copies of the Honourable Apex Court at Exhibit 'Q' and 'R' at pages 242 and 243.

6. No reply is filed to the present petition, though the petitioners placed on record other various documents namely orders passed by the Civil Court in the proceedings i.e. Regular Criminal Case No.91 of 2014, the order passed by the learned District Judge in Misc. Civil Appeal No.106 of 2015 and certain interim orders passed by the learned single Judge, and the primary notices issued by the KDMC in the year 2017 and reply to the said notices. It may not be necessary to refer to these documents in detail, as these documents only support the case of the petitioners.

7. Considering, the above referred material, we are of the opinion that the learned counsel for the petitioners was wholly justified in submitting before this Court that the proceedings against the petitioners

are nothing but abuse of process of law. We may say that bare perusal of the report and the backdrop of order passed by the competent authority of the KDMC's designated officer and Ward officer of 'G' Ward clearly show that respondent no.2 and other officials approached the petitioners in due haste and the petitioners have resisted the act only verbally. The entire report fails to show any physical overt act of the petitioners against respondent no.2. Counsel for the petitioners is thus justified in submitting before this Court that even taking the FIR as it stands on record, it miserably fails to attract Section 353 of the Indian Penal Code against the petitioners.

8. Learned counsel for the petitioners was also justified in inviting our attention to the order of Division Bench of this Court in support of his submissions that as per settled law reflected in various judgments of this Court and the Judgment of Apex Court to assess petition or application, wherein the quashment of FIR of proceedings is sought for, the basic material would be only FIR and any additional materials may not be utilized for forming an opinion. But in this case, an additional material is peculiar materials in the form of the Judgment and order of this Court and observations in the Judgment and order of this Court are in reference to the incident of 14th May 2018 giving rise

to the lodgment of the report which is in question in the present petition. As such, the gainful reference is made to the observations in the Judgment and order of this Court.

9. Considering all these materials, we are of the opinion that this is one of those such fit cases, wherein this Court, without giving a second thought can exercise its power under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings so as to prevent abuse of process of law.

10. The petition is allowed in terms of prayer clause (a), which reads thus:

a) this Hon'ble Court be pleased to quash and set-aside the charge-sheet bearing No.I-193 of 2019 in Regular Criminal Case No.1104 of 2019 pending on the file of the Ld. Judicial Magistrate, First Class, Kalyan, arising out of F.I.R. registered vide C.R.153 of 2018 with Dombivli Police Station, Pune for the offences punishable u/s.353 r/w.Section 34 of the Indian Penal Code.

The writ petition stands disposed of accordingly.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)