

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 457 OF 2021

Roshan Mahesh Makhija.

...Petitioner.

Versus

The State of Maharashtra & Another.

..Respondents.

Mr. Hrishikesh Mundargi i/b Ms. Paavani Chadda for the Petitioner.

Mrs. S. D. Shinde, APP for the Respondent-State.

Mr. Keral Mehta for Respondent No. 2.

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

Date : April 29, 2022.

P. C. :

1. By this petition filed under Article 226 of the Constitution of India, the Petitioner has sought quashment of an First Information Report (for short, "FIR") bearing CR No.119 of 2019 registered against him with Central Police Station, Thane on the allegation of commission of offence punishable under sections 326 and 504 read with 34 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No. 2 herein.

2. The allegations in the said FIR are that on 17th March 2019 at about 2.00 a.m. Respondent no. 2 had shut his shop and attending the nature's call (urinating), at that time, the Petitioner came there in Innova car and assaulted Respondent No.2 on his hand with knife and demanded repayment of loan amount of Rs.1 lakh. It is further alleged that one

unknown person too assaulted Respondent No.2 with knife on his back. Soon thereafter the Petitioner as well as the said unknown person left the spot. Respondent no.2 returned back to his shop wherefrom he was taken to Vyankatesh hospital, Ulhansnagar and thereafter Respondent No.2 lodged the present FIR with Central Police Station, Thane.

3. Learned counsel appearing for the the Petitioner as well as learned counsel appearing for Respondent No.2 submitted that though initially the quashment of FIR was sought on merits, now the parties have settled the dispute amicably and seeking the quashment of FIR in view of the mutual understanding arrived at between the parties.

4. In terms of the amicable resolution of the matter/case between the parties, informant (Respondent No.2 herein) has filed an affidavit in the present petition. In this affidavit, Respondent No. 2 has made two fold submissions; firstly the dispute between himself and the Petitioner accused is resolved peacefully and amicably; and the second submission is in the nature of a mistaken identity of assailant and it is stated in the following words :

"The dispute is purely based on a misunderstanding, as since the Petitioner had a similar car to the assailants and it was dark due to the night, I assumed incorrectly and mistook my assailant as the Petitioner herein."

5. Considering the affidavit, it can be safely said that even if

the trial is permitted to be proceeded with, the informant / complainant if in his testimony re-iterates the ground of mistaken identity, there is hardly any chance of conviction of the Petitioner-accused. As such the trial would be nothing but an exercise in futility.

6. Apart from above, it is pertinent to note that in the affidavit filed Respondent No.2, Respondent no.2 has stated that he has given his complete support and consent for the above mentioned FIR and the proceedings arising out of it to be quashed and set aside, in the interest of justice and equity. He has further stated that he did not intend to continue even for a moment the said proceedings.

7. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the FIR alive, except ultimately burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforesaid fact-situation, the continuation of prosecution of Petitioner in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the FIR in question in order to secure the ends of justice. We are in agreement with the submission of learned Counsel appearing for the respective parties that continuation of criminal proceedings/ FIR in the instant case

will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

8. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the FIR in question. Accordingly, petition is allowed in terms of prayer clause (a). However, we also find it would be appropriate to saddle the Petitioner with the cost of Rs.15,000/-, which shall be paid to "Tata Memorial Hospital" an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioner shall pay the said cost and produce the receipt thereof on the file of this Court within the period of 12 weeks from today. Failing to pay cost and produce receipt within the stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings / FIR shall be treated as *non-est*.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]