

SHAGUFTA
Q PATHAN
Digitally signed
by SHAGUFTA
Q PATHAN
Date:
2022.12.19
15:44:43
+0530

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

CRIMINAL WRIT PETITION NO. 1479 OF 2020

Hemal Sohan Kanani

...Petitioner

Versus

1. The State of Maharashtra

2. Dilip Lalchand Porwal

...Respondents

Mr. Ashok Mishra a/w Mr. Hrishikesh Naik i/b M/s. Solicis Lex for the
Petitioner

Mr. J. P. Yagnik, A.P.P for the Respondent No.1-State

Mr. Milind Nakashe i/b Mr. Ajay Basutkar for the Respondent No.2

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
WEDNESDAY, 7th DECEMBER 2022**

P.C :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the
consent of the parties and is taken up for final disposal. Learned
A.P.P waives notice on behalf of the respondent No.1–State.
Mr. Nakashe waives notice on behalf of the respondent No.2.

3 By this petition, the petitioner seeks quashing of the FIR registered vide C.R. No. 54/2020 registered with the Bhayandar Police Station, Thane, at the behest of the respondent No. 2 for the alleged offences punishable under Sections 143, 147, 149, 323, 427, 447, 504, 506 of the Indian Penal Code and under Sections 37(1) and 37(3) of the Maharashtra Police Act. Quashing is sought on the premise that the petitioner and the respondent No. 2 have amicably settled their dispute.

4 The petitioner is a practicing advocate, who was at the relevant time, aged 24 years. According to the respondent No. 2 (original complainant), he is in the construction business in Mira-Bhayandar area. According to the respondent No. 2, he was in possession of old Survey No. 569/2 (new Survey No. 269) and that the 7/12 stood in his name. He has stated that after the demise of one Ranchhodbhai Patel in December 1989, his wife-Surajben Patel and children became the legal heirs. On the basis of the distribution letter, the property in question i.e. Survey No. 569/2 went to

Yogendra Patel i.e. one of the children of Surajben Patel. He has further stated that on 16.10.1993, the said property was sold by Yogendra Patel to Ketan Kirtibhai Shah, who took possession of the said property and that, in April 1994, said Ketan Kirtibhai Shah donated the said property to Shri Shailesh Shah and Naresh Jain and in July 2004 Shailesh Shah and Naresh Jain entered into a joint venture with him (complainant) and gave him the development rights as well as the possession of the property in question. It appears that a civil suit was initiated by the respondent No. 2 in the Thane Civil Court, as the Conveyance Deed entered into between the parties was without the NOC of the ULC. It appears that thereafter, one Mrs. Pratibha Pandey filed a Miscellaneous application in the Civil Court, Thane and requested for a probate order. Accordingly, on 06.05.2008, the Court passed the probate order, pursuant to which, Pratibha Pandey entered her name in the 7/12 extract and in 2009, she came to the property in question to take possession of the same. The respondent No. 2 has alleged that he objected to her taking possession of the land. He has further

stated that he the owner of the land Surendra Patel, the complainant and his partner-Shailesh Shah came together and filed a Miscellaneous Application in the Civil Court, Thane, which application is pending.

5 According to the respondent No. 2, earlier, partner of M/s. Jay Gurudev Realty, was trying to take possession of the property in question and had asked him to compromise, however, he refused to compromise and instead, filed a complaint with the Bhayandar Police Station on 29.05.2015. In the said complaint, he has alleged that the partner of M/s. Jay Gurudev Realty was trying to take possession of the land from him. He has further alleged that the partner of M/s. Jay Gurudev Realty kept harassing him by sending different people, pursuant to which, he was constrained to lodge several complaints as against them to the police and the Government.

6 In this background, the FIR pertains to an incident dated

20.02.2022, when the respondent No. 2 was coming to his office. He has stated that he was informed on phone that about 10-15 people had brought JCB on the property in question and they were trying to enter the said property. He has alleged that when he stopped the said persons, they started abusing and assaulting him. He has stated that he immediately informed the incident to the Bhayandar Police Station and also informed his supervisor to go to Bhayandar Police Station and lodge a complaint. Respondent No. 2 has further alleged that at about 11:30 a.m, when they reached Mauje Bhayander (West), i.e. where his property is situated, the partner of M/s. Jay Gurudev Realty, along with other persons, including the petitioner (lawyer) was standing. He has alleged that all of them were arguing with him and some were shouting, pursuant to which, the aforesaid complaint was lodged. We are informed that charge-sheet has been filed in the said case.

7 In the interregnum, the petitioner amicably settled the dispute with the respondent No. 2. The petitioner as well as the

respondent No. 2 have filed their respective affidavits. To the said affidavits, are annexed the photocopies of their respective Aadhar Cards, duly attested by them.

8 The petitioner, in his affidavit dated 06.11.2022, duly affirmed before the notary, has stated that the accused No. 1 was his client and on his request, he visited the property in question, where the incident took place. He has stated that the accused No. 1 had not informed him the purpose of the said visit, nor was he informed the background and facts relating to the said property, about its dispute, its occupancy, etc. He has stated that he had gone there on the request of the accused No. 1, only in the capacity as a lawyer, with no intention whatsoever harboured by the other accused. The petitioner has withdrawn all allegations as against the respondent No. 2.

9 Learned counsel for the respondent No. 2 has also tendered respondent No.2's affidavit dated 06.12.2020, duly

affirmed before the Notary. In the said affidavit, he has stated that he has no objection to the quashing of the FIR. The respondent No. 2 has stated that the petitioner was present, as he was misguided by his client. The petitioner has withdrawn all allegations as against the respondent No. 2.

10 The petitioner is present in Court. He reiterates what is stated by him in the affidavit. On being questioned, he states that he has withdrawn all allegations made by him as against the respondent No. 2.

11 The respondent No. 2 is also present in Court. On being questioned, he reiterates what is stated by him in his affidavit that he has no objection to quashing of the FIR only *qua* the petitioner, having regard to what is stated by him in the affidavit. Learned counsel for the respondent No. 2 has identified the respondent No. 2. Learned A.P.P has verified his original Aadhar Card.

12 *Prima facie*, it appears that the petitioner was only 24 years of age at the relevant time and had gone at the behest of the accused No. 1 to the spot. *Prima facie*, it appears that there is some substance in what is stated by the petitioner that he was misguided by the co-accused; that there are no allegations or nor any overt act has been attributed to the petitioner. He is stated to be standing at the relevant time. The petitioner is admittedly not concerned with the property in question which is the bone of contention between the other accused and the respondent No. 2.

13 Considering the aforesaid, the nature of allegations *qua* the petitioner, the amicable settlement between the petitioner and the respondent No. 2 and the affidavit of the petitioner and the respondent No. 2, there is no impediment in allowing the petition.

14 The petition is accordingly allowed. The FIR registered

vide C.R. No. 54/2020 registered with the Bhayandar Police Station, Thane, as against the petitioner, is quashed and set-aside.

15 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

16 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.