

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

CRIMINAL WRIT PETITION NO. 2296 OF 2021

Aslam Alamgir Malkani ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

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Mr. A.A.Siddiqui i/b. A.A.Siddiqui Associates for the Petitioner.
Mr. K.V. Saste, APP for the State.

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**CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED : 2 AUGUST 2022

P.C. :-

Heard learned Counsel for the Petitioner.

2. By this petition, the Petitioner is seeking to quash the FIR lodged by Respondent No.2 bearing No. 237 of 2021 dated 23 April 2021 registered at Dindoshi Police Station under Sections 326, 354, 506 (II), 109 and 509 read with 34 of the Indian Penal Code.

3. The case of Respondent No.2 is that he is staying with his family at Malad, Mumbai. He is in business of preparation of cards and his brother is a tax consultant. His allegation is that where he

stays, in that area, construction of a building is going on wherein one Aslam Alamgir Malkani, that is, the Petitioner is a developer. He stated that one Mustafa Memon is always with the Petitioner. He stated that the Petitioner and one Mustafa Memon have created a reign of terror in the area and nobody dares to make any complaint against them. There were certain complaints in respect of the project under the slum development scheme. Respondent No.2 has stated that on 1 April 2021, the Petitioner had called the brother of the Complainant on phone and thereafter, taking the phone on a conference call, had threatened the Complainant. Respondent No.2 stated that on 23 April 2021, when he had returned home, Mustafa Memon accosted him and told him that since he is making complaint against them, he will be taught him a lesson. Respondent No.2 was accordingly assaulted with an object made out with metal, wherein he suffered serious injuries on his face. Narrating the incident of 23 April 2021, the FIR was filed.

4. The learned Counsel for the Petitioner submits that the incident of 1 April 2021 is non-cognizable and the police in light of Section 156 of the Code of Criminal Procedure ought not to be permitted to investigate. He submits that there is no connection whatsoever with the Petitioner and the incident of 23 April 2021 and therefore, no offence is made out against the Petitioner.

5. By ad-interim order dated 5 August 2021, while issuing notice, the Division Bench had directed that the investigation can proceed but the chargesheet will not be filed without permission of the Court. The chargesheet has been filed in respect of the other accused.

6. We find no merit in the contentions of the Petitioner as the FIR is not about the incident of 1 April 2021 but is about the incident of 23 April 2021. Earlier incident is a narration about the Petitioner and Mustafa Memon jointly creating reign of terror in the area. It is in that context the incident of 23 April 2021 is narrated where pertinently Mustafa Memon assaulted the Respondent No.2 because he had complained against 'them', meaning thereby the Petitioner and Mustafa. The Respondent No.2 has received injuries.

7. The FIR invokes Section 109 of the Indian Penal Code. Therefore, it cannot be said that no offence is disclosed against the Petitioner. The arguments of the Petitioner on merits of his defence would be considered at the time of trial. This case cannot be considered as exceptional case to quash the FIR.

8. The petition is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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