

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

WRIT PETITION NO. 3439 OF 2021

Ashok Hanumant Patil and Anr.	...Petitioners
vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Vinay V. Nair - Advocate for the Petitioners
Mr. K. V. Saste - APP for the Respondent No. 1-State

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

DATE : 28th MARCH, 2022

P. C. :-

- . Heard the learned counsel appearing for the Petitioners at length.
2. Notice was issued and at cause the learned counsel for Respondent No. 2 has appeared at an earlier date. Today, he is not present in this Court. The detailed Order was passed by this Court on 07/03/2022.
3. The learned counsel appearing for the Petitioners invited our attention to the copy of the First Information Report bearing Crime No. 211 of 2014 registered at Kopar Khairane Police Station, Vashi, Navi Mumbai for the commission of Offence under Sections 332, 353, 504 and 506 read with Section 34 of Indian Penal Code.
4. On perusal of the complaint placed on record at Exh. 'A'-page 22

shows that the Respondent No. 2 – Avinash Jadhav is an employee of the New Mumbai Municipal Corporation and attached to squad dealing with the issue of encroachments and one Shri Balkrishna Patil is Supervisory Officer i.e. In-charge of that squad. The incident in question took place on 27/06/2014. The Corporation was carrying out a drive for removal of encroachments under the guidance of Ward Officer Shri Balkrishna Patil and this activity was going on in an area namely, Sector 5, Kopar khairane near the place called as 'Mayur Bar'. Two vehicles namely, Dumpers bearing No. MH 43 2857 and MH 04 CA 499 were picking up the debridge from the spot and the dumper drivers were in the process of reversing the vehicles by picking up the debridge, the Respondent No. 2 was showing space to the drivers. At that point of time, the Petitioner No. 1 entered on the scene and put a query to the Respondent No. 2, as to whether he knows him, the Respondent No. 2 replied in affirmative. The Petitioner No. 1, then insisted the Respondent No. 2 to keep dumpers on that site only saying that dumpers belongs to him. The Petitioner No. 1 then hurled abused and caused disturbance and was ultimately entered in act of deterrence to the Respondent No. 2 who was discharging his duties.

5. The Respondent No. 2, then immediately informed the incident to an employee of the Corporation namely, Mr. Rajesh Raut. On receipt of the information Mr. Rajesh Raut immediately rushed to the spot at about

15.45 hours (3.45 p.m.). At that time, the Petitioner No. 1 as well as another person namely, Umesh and third person whose identity was unknown to the Respondent No. 2, came out of the restaurant bar, namely, Mayur Bar and by hurling abuses to Mr. Rajesh Raut again started causing deterrence in their duties, as per the statement of Respondent No. 2.

6. The act of the Petitioner didn't stop there. The Petitioner No. 1 then gave fist blow to the Respondent No. 2 resulting in falling of spectacles of Respondent No. 2. When the Respondent No. 2 tried to pick up the spectacles, he was again subjected to physical assault of all the accused persons and the other person namely, Mr. Rajesh Raut was also subjected to fist blows. The accused persons gave threat of dire consequences to Respondent No. 2 as well as Mr. Rajesh Raut, if they approached to Police Authorities by lodging complaints. With these statements, the Report was lodged and accordingly F.I.R. was registered.

7. The learned counsel appearing for the Petitioners vehemently submitted before this Court firstly, that as it is stated in the report that Respondent No. 2 has acquaintance with the Petitioner No. 1 with prior to the incident, it cannot be stated that it was act of the Petitioners to deter the Respondent No. 2 from discharging their duties. But at least it can be said that it was some personal dispute between the Petitioner and Respondent No. 2. The learned counsel on this submission, made an

attempt to submit before this Court that in this situation the attraction of offence is not sustainable. Then the learned counsel secondly, submitted before this Court that the Respondent No. 2 has filed affidavit in this Court supporting the prayer of quashment of the report and our attention was invited to the said affidavit which is placed on record at Exh. 'E' - page 38.

8. It will be useful for our purpose to refer important portion of the affidavit quoted in paras 4, 5 , 6 and 7. It is as follows:

4. That on 27th June 2014, as stated by me, in my F.I.R. statement, while I was supervising an N.M.M.C. debris collection work at Kopar Khairane, Navi Mumbai, I happened to meet Mr. Ashok and 2 of his aides/friends, who, as per my understanding, had come to visit a nearby bar, to relax and spend time with each other.

5. That a verbal altercation took place between me and Mr. Ashok, due to some misunderstanding, which eventually led to a minor physical altercation, also involving some onsite colleagues of mine and Mr. Ashok's two aides/friends, i.e. Mr. Shankar Bagul and Mr. Umesh Juvekar (hereinafter called Mr. Shankar and Mr. Umesh respectively), who are the Accused Nos. 2 and 3 respectively.

6. That though, in my statement, I have accused Mr. Ashok and his friends of assaulting me and my colleagues, I withheld a part of the truth, as to how I too had a small share

of involvement in causing the misunderstanding, based on some previous grudge that we both held. Ideally, we both should have talked it out, but, out of ego, we failed to understand each other, and therefore, ended up childishly assaulting each other.

7. *That the said incident hardly lasted for even 5 minutes, and, as such, I realise that it would be grossly unjust and unfair on my part to claim that this personal incident obstructed me or my colleagues from carrying out our respective official works, and therefore, the corresponding sections, of Indian Penal Code, under which I got Mr. Ashok and his friends booked, seems to be too harsh.*

9. It is also stated by the Respondent No. 2 in his affidavit that “he is making this affidavit of his own independent decision and free volition.”

10. The learned APP appearing for the Respondent No. 1 State, opposes the Petition.

11. On hearing the learned counsel appearing for the parties and on perusal of the material placed on record, even though the affidavit is filed on behalf of Respondent No. 2 supporting the prayer of quashment, We are unable to persuade ourselves to accept the statement of the learned counsel for quashment of the report on following grounds:-

(a) Though the counsel for the Petitioner vehemently submitted that incident in question was only outcome of a

private dispute between the parties and though in support of this submission the counsel placed reliance on Judgment of Punjab and Haryana High Court in the matter of one *Vinod @ Boda and Others Vs. State of Haryana and Another*.¹

(b) The perusal of the report complaint clearly reveals that the incident in question took place at a stage when the Respondent No. 2 was discharging his duties as Member attached to squad for removal of the encroachments. The statement makes a reference to sequence of events in detail. At the cost of repetition, we may state that the Respondent No. 2 while discharging his duties by showing side to Driver of vehicles namely, Dupmer which engaged in the act of picking up debridge, the Petitioner No. 1 utter the word, firstly, that the dumper belonging to him and dumper be remained at this spot only and started abusing the Respondent No. 2 and was indulged in act of deterrence on discharging duties of Public servant.

(c) The report/statement further makes it clear that immediately the Respondent No. 2 reported this incident to one of the employee of Corporation Mr. Rajesh Raut. Now if the incident was merely the outcome of private dispute, then there was no reason for Respondent No. 2 to call an employee of Corporation and then when the other employee Rajesh Raut reached the spot on receipt of call, the Petitioner No. 1, another accused-Umesh and third accused whose identity, Respondent No. 2 was not aware and it seems that Petitioner

¹ 2013 SCC Online P & H 8900 : ILR (2014) 2 P & H 159 : (2017) 1 RCR (Cri) 571 (DB)

No. 2 is the said accused No. 3 came out of restaurant and started abusing Mr. Rajesh Raut. Mr. Rajesh Raut made an attempt to resist the Petitioner by saying that Corporation was carrying out a drive for removal of encroachments and states that it is activity of Corporation and the accused person shall not indulge in act of deterrence of the Public servant from the discharging of their duties. But such statement of Rajesh Raut was of no consequences as accused person paid no heed to him and started physical assault of Respondent No. 2 as well as other person Mr. Rajesh Raut.

12. It is not in dispute that act of deterrence of public servant from discharging his duties is now look with a seriousness in view of the amendment in the Code. It is not out of place to refer to our Order dated 07/03/2022 and we quote at the cost of repetition, our observations in para nos. 3 and 4 are as follows:-

“3. It seems that during the investigation, identity of Petitioner No. 2 was disclosed and the investigation agency effected the arrest of Petitioner No. 1-Ashok Patil as well as Petitioner No. 2-Shankar Sahadu Bagul.

4. When it was appraised to learned counsel for the Petitioners that as there is reference of Mr. Rajesh Raut, who is victim of alleged assault, and said Mr. Rajesh Raut is not made party to the petition, merely consent of one person-complainant is not a ground for the Petitioners to submit before this Court that the Petitioners are

approaching this Court for quashment of FIR by consent. Learned counsel then submitted that the Petitioners are challenging the first information report on merits also. He further submitted that during the pendency of petition, the charge-sheet has been filed before the competent Court and even the said charge-sheet fails to disclose any material against the Petitioners. Then again on specific query as to whether all the necessary material forming part of the charge-sheet is placed before this Court, learned counsel submitted that though all the documents forming part of charge-sheet are not placed before this Court, the relevant papers are placed before this Court. Now, we are unable to consider the merits if all the papers forming part of charge-sheet are not before this Court. In view of these difficulties, at this stage we are unable to take up the petition either on the ground of consent or on merits. If the Petitioners are desirous of prosecuting the petition on merits, they may take appropriate steps including placing on record the entire copy of charge-sheet. Stand over to 28th March 2022 under the caption 'Direction'."

13. The learned counsel for the Petitioners placed reliance upon the Judgment in the matter of *Vinod @ Boda and Others Vs. State of Haryana and Another (supra)*. In para 16 which has been observed by the High Court of Punjab and Haryana that as follows:

“In the present case, merely because the complainant was working as a teacher and injuries were caused to him while he was on duty at School, learned Single Judge has treated it to be a case of an offence against the “Society” observing that public servant has been prohibited from performing his duties, the proceedings cannot be quashed. Whereas, in the facts and circumstances of the case, the dispute was prima facie between the parties in their individual and private capacity. Therefore, even on merit, the present is a fit case where the ends of justice demand quashing of proceedings as the dispute has been settled amicably and this would bring harmony between the parties.”

14. As observed by us, we are unable to accept the statement that dispute between the parties was of the private nature and in the said judgment itself reference is made to judgment of the Hon’ble Apex Court by quoting para nos. 52 and 54 of the judgment and para 54 reads thus :

“Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings 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; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well- being of society and it is not safe

to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.” Emphasis supplied by us.

15. Considering all these facts and including the aspects of Respondent

No. 2 affidavit filed in this Court supporting the prayer of quashment of report, for the reasons above referred, we are unable to find any merits in the Petition. The Petition is being merit less and deserves to be dismissed and same is accordingly dismissed.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)