

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

CRIMINAL WRIT PETITION NO. 3474 OF 2022

Dinesh Shantaram Kashid ...Petitioner
VS.
The State of Maharashtra ...Respondent

Mr. Aashay Topiwala i/by Mr. Abdeali Kothawala - Advocate
for the Petitioner

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

**CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.**

DATE : 27th SEPTEMBER, 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 service on behalf of the sole respondent-State.
- 3 By this petition, preferred under Article 226 of the Constitution of India and Section 482 of the Criminal

Procedure Code, the petitioner seeks quashing of the FIR bearing C.R. No. 300 of 2021 registered with the Junnar Police Station, Pune, as against the Petitioner for the alleged offences punishable under Sections 353, 186, 188, 269 r/w 34 of the Indian Penal Code.

4 Learned counsel for the petitioner seeks quashing of the C.R. on the ground of parity. He submits that identically placed co-accused-Jagannath Swami's petition was allowed by this Court, vide Order dated 11/07/2022 i.e. this Court quashed the aforesaid C.R. as against the petitioner therein i.e. Jagannath Swami. He submits that allegations made against the petitioner in the C.R., are identical/similar, to that of co-accused Jagannath Swami.

5 Learned APP does not dispute the fact, that the role of the petitioner is similar/identical to that of co-accused Jagannath Swami. He also does not dispute the fact, that no overt act has been attributed to the petitioner in the said case.

6 Perused the papers. According to the prosecution, the incident took place on 31/07/2021, when the Complainant and other police personnel, working with the Junnar Police Station were assigned duty to take action, against those found violating the restrictions imposed by the competent authority, in the wake of Covid-19 pandemic. It is the prosecution case, that on the date of incident, i.e. 31/07/2021, at about 3.00 p.m., when the Complainant and other police personnel were discharging their duties, at Naneghat tourist spot and were taking action against those found violating the restrictions, the accused prevented them from discharging their duties, by using criminal force. Hence, the complaint/F.I.R. was lodged as against the accused person including the petitioner.

7 It appears from a perusal of the F.I.R. lodged by Ganesh Balu Jori, Police Constable, that the allegations are essentially as against co-accused Snehal Todkar and Nilesh Gaikwad. As far as the petitioner is concerned, it appears,

that the petitioner was hired as a driver on a vehicle on that day and the passengers had asked him to stop the taxi, when the alleged incident took place. Admittedly, no overt act has been attributed to the present petitioner in the alleged incident.

8 It appears that the petitioner as a taxi driver of the vehicle engaged by his passengers, was present, by chance, by virtue of his job, when the incident took place. It is not the prosecution case, that the petitioner either assaulted the complainant or any other police personnel or prevented them from discharging their official duty. As noted above, no specific overt act has been attributed to the petitioner in the commission of the offence. In the said circumstances, continuity of the prosecution as against the petitioner is nothing but, an abuse of the process of law.

9 It is also pertinent to note that a co-accused- Jagannath Swami, in the very same case had preferred a petition before this Court, being Writ Petition No. 4409 of

2021. This Court vide Order dated 11/07/2022 allowed the said Petition and as such quashed the proceedings qua him. The said Order is at Exh. 'B' at page no. 12 of the petition. The role of the petitioner is identical to that of co-accused Jagannath Swami and hence the petitioner is also entitled to the same relief.

10 Accordingly, we allow the petition and pass the following order:-

ORDER

- (i) Writ petition is allowed.
- (ii) Accordingly, C.R. No. 300 of 2021 registered with the Junnar Police Station, Pune for the alleged offence punishable under Section 353, 186, 188, 269 r/w 34 of Indian Penal Code, qua the petitioner -Dinesh Shantaram Kashid is quashed and set aside.

11 Rule is made absolute in the aforesaid terms.

Petition is disposed of accordingly.

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

[S. M. MODAK, J.]

[REVATI MOHITE DERE, J.]