

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

WRIT PETITION NO. 4041 OF 2021

Padmanabh Shivram Karmarkar

...Petitioner

vs.

The State of Maharashtra & Ors

...Respondents

Mr.Rishi Bhutta with Tamsin Monis for Petitioner.

Mr.K.V. Satste, Addl.PP for Respondent Nos.1 and 2.

Mr.Rakesh Pandey i/b. ALJ & Partner for Respondent No.3.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 13 JANUARY 2022

P.C. :

. Heard learned Counsel for the Petitioner, learned APP for Respondent Nos.1 and 2 and learned Counsel appearing for Respondent No.3 -Mrs.Nayantara Demi Devid.

2. Learned Counsel for Respondent No.3 submitted that on earlier date, Respondent No.3 was personally present in this court and her presence for the next scheduled date was dispensed with. Learned Counsel further submits that Respondent No.3 wanted to attend the court proceeding personally but for the situation prevailing, she could not attend the proceeding. He prayed that her presence be dispensed with. The affidavit-in-reply is already filed at the instance of Respondent No.3 in this court on 26 October 2021.

3. The Petitioner, a private businessman dealing in stocks, is

before this court seeking quashment of the FIR, bearing Crime No.94/2021, registered with Market Yard Police Station, Pune City on 22 July 2021 for commission of offences punishable under Section 420 read with Section 34 of IPC as well as Section 63 of the Copyright Act of 1957.

4. Our attention was invited to the copy of FIR placed on record at Exhibit-B, Page 19, to submit that initially Respondent No.3 made certain allegations against two accused persons, namely, Jethalal Ramlal Solanki and Khetaram Kalaram Devasi. At the initial stage of lodgment of report, there is no reference of any stock of the present Petitioner, except name of one agency, Aparna Enterprises, that too from statement of one of the accused.

5. Learned Counsel for the Petitioner then submitted that it seems that in the process of investigation, probably one of the accused disclosed the name of the Petitioner and as such, the Investigating Agency proceeded against the Petitioner. Learned Counsel for the Petitioner then invited our attention to the affidavit filed on behalf of Respondent No.3. It may be useful for our purposes to refer to certain material statements in the affidavit-in-reply and these statements read thus :

“4. I have verified the record of the Petitioner which reflects the Petitioner’s unblemished long association with HUL since 1996 when Redistribution Stockist Agreement was executed and signed between HUL and Petitioner’s proprietary concern viz. M/s Aparna Enterprises. It was renewed from time to time and is still in existence. Since then, the Petitioner is operating as HUL’s Redistributor Stockist as per the Agreements.

5. I have verified from HUL that the Petitioner has strictly conducted his distribution agency business as per the terms and conditions of the agreement and has never taken any undue advantage of HUL's faith in him.
6. I declare and confirm that there is no grievance or dispute between the Petitioner and HUL. The Petitioner has actively participated in taking action against those who unlawfully use HUL's trademarks and/or copyrights on their products to pass them off as HUL's products."

In para 8 of the affidavit-in-reply, Respondent No.3 in clear and unambiguous words has stated and confirmed that he has no objection if the FIR in question against the Petitioner is quashed. Then Respondent No.3 has recorded his no objection to the quashing of FIR on his own free will in para 8 of the affidavit in reply.

6. Considering all these facts, we find merit in the submission of learned Counsel for the Petitioner that even if the matter is permitted to proceed against the Petitioner, it would be an exercise in futility. Learned Counsel also is justified in submitting before this court that in the light of these facts, the prosecution against the Petitioner and further proceedings would be nothing but an abuse of process of law.

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 the

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 subject FIR 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 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 the 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.

9. Though the contesting parties, namely, the Petitioner and Respondent No.3, are jointly before this court for seeking quashment of the report and in view of the affidavit filed at the instance of Respondent No.3, we are of the opinion that no fruitful purpose would be served by keeping the petition pending or permitting Respondent Nos.1 and 2 to continue the proceedings against the Petitioner, the fact remains that at the instance of Respondent No.3, the Investigating Agency was set into motion and the instigating machinery had to undertake various exercise in the process of investigation and that the entire exercise of the agency would result in futility, as such, we are of the opinion to allow the petition subject to certain condition.

10. Accordingly, the writ petition is allowed in terms of prayer clause (c) subject to the Petitioner and Respondent No.3 depositing an amount of Rs.25,000/- each in the accounts of Police Welfare Fund Board

within two weeks from today and place on record receipt of deposit.

11. Learned APP to provide the necessary details of the State Police Welfare Board to Counsel for the Petitioner as well as learned APP to share necessary details of the accounts of Police Welfare Board to Counsel for the Petitioner and Respondent No.3.

12. With the above referred directions, the petition stands disposed of.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)