

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5742 OF 2021**

Shaileshkumar Bhuvatmal Jain

.....Petitioner

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Vijay Kurle a/w Mr. Samkit Shah for the Petitioner.

Mr. Pratik Sarkar for Respondent No.2.

Ms. J.S. Lohakare APP, for the Respondent-State.

Mr. Namdev Jadhav, PI., Borivali Police Station.

**CORAM : A. S. GADKARI AND
MILIND N. JADHAV, JJ.
DATE : 18th NOVEMBER, 2022.**

P.C.:-

1) Mr. Kurle, learned Advocate for Petitioner submitted that, pursuant to the Order dated 4th October, 2022 though he has carried out necessary amendment in the prayer clauses of the Petition, inadvertently he could not delete name of Respondent No.2 from the array of Respondents. He therefore seeks further leave to delete the name of Respondent No.2.

Leave granted.

2) Necessary amendment be carried out forthwith and in any event, during the course of the day.

Advocate on record for Petitioner shall sign the said amendment. Re-verification is dispensed with.

3) By the present Petition under Article 226 of the Constitution of India, Petitioner–original Accused and Respondent No.2 (informant) seeks quashment of FIR No.1046 of 2021 dated 23rd September, 2021 registered with Borivali Police Station, Mumbai under Sections 354D and 506 of the Indian Penal Code (for short, “*IPC*”).

4) Learned Advocate for Petitioner submitted that, Petitioner and Respondent No.2 have settled the matter amicably out of the Court and therefore the present crime may be quashed.

5) Learned Advocate for Respondent No.2 today tendered across the bar, an Affidavit-cum-Consent of Respondent No.2 dated 17th November, 2022 in the present Petition. In paragraph No.3, it is stated that this FIR pertains to the dispute between Petitioner and Respondent No.2 over the suit property belonging to Respondent No.2.

Copy of the Consent Terms between Respondent No.2 along with Mr. Mandar A. Borkar who were Plaintiffs in Suit (L) No.28943 of 2021 filed in this Court on its Original Side against Petitioner, who is constituted attorney of three other Defendants, is annexed with the Affidavit dated 17th November, 2022.

It is further stated that during the pendency of the investigation of the present crime, due to intervention of the well wishers, the disputes between Respondent No.2 and Petitioner have been amicably resolved/settled. That, Respondent No.2 wishes to withdraw all the

allegations levelled against the Petitioner. It is lastly stated that, as the parties herein have amicably resolved all their disputes, the present FIR be quashed.

6) Learned APP on instructions from Mr. Namdev Jadhav, P.I. Boriwali Police Station, Mumbai submitted that during the course of investigation of the present crime, the Petitioner had produced his mobile phone, a description of which is given in the panchanama dated 23rd September, 2021, which was allegedly used by him in the present crime while effecting video shooting of the informant. That, the said mobile phone has been sent to Forensic Science Laboratory, Kalina, Santacruz, Mumbai (for short, "*FSL, Mumbai*") for analysis and the report of it is not yet received from the said Laboratory.

As we are now quashing the present crime by consent of the concerned parties, learned APP on instructions submitted that, the Investigation Officer will issue a requisition/letter to the FSL, Mumbai for return of the said article i.e. mobile phone of the Petitioner. She submitted that, the said requisition and further procedure will be adopted and completed within a period of three weeks from the date of uploading of the present Order on the official website of the Bombay High Court.

7) In view thereof, the Investigating Officer is directed to return the mobile phone of the Petitioner to him within a period of four weeks from the date of uploading of the present Order on the official website of

the Bombay High Court.

8) In view of the above discussion, we are of the opinion that, the crime registered by the Respondent No.2 against the Petitioner deserves to be quashed in the interest of justice, which we accordingly do.

C.R. No.1046 of 2021 registered with Borivali Police Station, Mumbai is hereby quashed.

9) As the Respondent No.2 has set the criminal law into motion, as an ultimate result of which the dispute between Respondent No.2 and Petitioner has come to an end by way of settlement, Respondent No.2 offers to pay a cost of Rs.5,000/- to the Maharashtra Police Welfare Fund having its Account in the name of *“Maharashtra Centre Police Welfare Fund Account No.914010029005759, IFSC Code No.UTIB0000060, UTI Bank”* within a period of one week from the date of uploading of the present Order on the official website of Bombay High Court. The said statement is accepted.

Respondent No.2 is directed to produce on record/in the Registry, copy of the said receipt of payment of cost.

10) Petition is accordingly allowed in terms of prayer clause (a) subject to payment of cost of Rs. 5,000/- as stated above.

11) List the Petition on 2nd December, 2022 for reporting compliance of payment of cost as noted in paragraph No.9 above.

(MILIND N. JADHAV, J.)

(A.S. GADKARI, J.)