

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

WRIT PETITION NO. 4564 OF 2018

Shri P. K. Datta

....Petitioner

Versus

The State of Maharashtra and ors.

....Respondents

Mr. Nilesh M. Wable, advocate for the petitioner.

Ms. Sangeeta D. Shinde, APP for the State.

Mr. Dilip Shinde, advocate for respondent No.2.

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

DATE : 17th MARCH, 2022.

P.C. :

1. Heard learned counsel for the petitioner, learned APP for respondent No.1- State, and learned counsel for respondent No.2.

2. Perusal of the record shows that the petitioner was permitted to amend the petition by adding respondent No.3 as party respondent to the petition and notice was issued to the respondents vide order dated 5th March, 2019. Perusal of the record further shows that the notice is issued to added respondent No.3 and respondent No.3 is duly served, however, none appears on behalf of respondent No.3.

3. Be that as it may, respondent No.2 was employed in Indian Army and posted at 235/1 Depot Battalion, B.E.G and Center Sappers,

Khadki, Pune. and was working as a clerk since the year 2015. On 3rd March, 2017, at about 5.00 p.m. when respondent No.2 was about to leave his house to attend the duty, his minor son – Loksanth aged about 5 ½ years also came out of the house along with respondent No.2. Respondent No.2 left the son near the house and proceeded for his duty. At about 5.45 p.m., he was informed by one of his colleague that his son – Loksanth is subjected to electrical shock. He immediately rushed to the hospital. The medical officer at the hospital told respondent No.2 to shift his son to medical hospital at Khadki. Accordingly, the son of respondent No.2 was shifted to medical hospital at Khadki and during the treatment, unfortunately, the minor son lost his life. Respondent No.2, on the ground that electric cable was not properly maintained and due to open wire, his son suffered electrical shock, accordingly lodged a report against the present petitioner who was working as an Assistant Engineer as well as one Shri Major Mahesh Verma and Naik Subedar – Shri Haridas and other junior engineers. On receipt of the report, Crime No.0083 of 2017 was registered with Vishrantwadi against the accused persons for commission of offences under Section 304A read with Section 34 of the Indian Penal Code, 1963.

4. By inviting our attention to the order dated 5th March, 2019, learned counsel for the petitioner submitted that the investigating agency was permitted to continue with the investigation, however, it was directed

by this Court not to file charge-sheet and, as such, till date, no charge-sheet has been filed. Learned counsel for the petitioner then submitted that during the pendency of the petition, respondent No.2 gave second thought to the facts of the matter and by considering the major factor that the accused persons and respondents are serving in Indian Army and also considering that the act of keeping cable wire open was not attributed to the accused persons but the high tension cable was left alive by some other employee who could not be traced out, respondent No.2 felt it would not be fair to hold the petitioner and other accused persons responsible for keeping the cable open and alive and if for somebody else's act, the petitioner and other accused persons are subjected to departmental action including losing their jobs, it would not be in the interest of their family members. Thus, by taking this gracious and sympathetic approach, respondent No.2 filed an affidavit in this Court. It may not be out of place to refer to the relevant averments made in paragraphs 3, 4 and 5 of the said affidavit, which reads thus :

“3. I say that after passing one year and half months, I realized that the irreparable loss caused to me and my family will not be recovered and after discussing present case with Advocate I came know that the Petitioner and other Accused may be terminated from their services and ultimately Petitioner and co-Accused family will suffer great loss.

4. I say that considering all these facts and circumstances and being Indian Army Soldier, even

considering the fact that the loss happened with my family and I don't want to do the loss with another soldiers, since the person who has left the HT cable alive and did not done proper duty. Even in departmental enquiry the said person has not found out, hence to hold responsible for all persons is injustice to all.

5. *I say that in view of the above and future carrier of the above officers and their family I decided to withdraw FIR registered by me against Petitioner and other Co-Accused, even by letter dated 02.06.2018 addressed to In-charge Police Officer of Vishranthwadi Police Station I have requested to cancel/withdraw the FIR registered by me against the Petitioner and other co-Accused."*

5. At the cost of repetition, we state that only one of the accused viz. petitioner is before this Court for quashment of the FIR. However, respondent No.2, in his affidavit, has in clear and unambiguous term, stated that he has decided to withdraw the FIR registered by him not only against the petitioner but against other accused also and he has given a letter dated 25th June, 2018, accordingly to the In-charge Police Station Officer of Vishrantwadi Police Station. Perusal of the documents placed on record further shows that respondent No.3, by forwarding communication dated 23rd April, 2018 to Vishrantwadi Police Station, has also apprised about the finalization of enquiry conducted against the staff members and requested the police station authorities to quash the FIR as per rules.

6. Considering these facts, we are of the opinion that a case is made out for quashing the FIR as a whole and not only against the petitioner but also against other accused persons as keeping the FIR/proceedings pending or continuity of the same, would not serve any fruitful purpose. On the contrary, by quashing the FIR, the ends of justice would be secured. Accordingly, by exercising our inherent jurisdiction under Section 482 of the Code of Criminal Procedure, we quash the FIR No.83 of 2017 registered with Vishrantwadi Police Station for the offences punishable under Sections 304A read with Section 34 of the Indian Penal Code, 1860 against the petitioner as well as other accused persons. **The writ petition is, accordingly, disposed of.**

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)