

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5533 OF 2018

Vishal Vijay Kalantri
Aged about 42 years, Occu. : Promoter
of Dighi Port Limited, having Office at
6th Floor, New Excelsior Building,
O.K. Nayak Road, Fort,
Mumbai 400 001.

...Petitioner

Versus

1. The State of Maharashtra
Through Public Prosecutor,
High Court, Appellate Side,
Bombay.
2. Dighi Sagari Police Station
Taluka Shrivardhan, Zilla Raigad.
3. Dagdu Hiru Gamre
Age 57 Years, Occu. : Business
Gramsevak, Group Gram Panchayat,
Dighi, having address at Aarathi,
Taluka : Shrivardhan, Zilla : Raigad,
Also at Parle, Taluka : Poladkpur,
District : Raigad.
4. Group Gram Panchayat Dighi
At Post : Dighi, Taluka : Shrivardhan,
District : Raigad.

...Respondents

Mr. Harshvardhan Salgaonkar a/w Mr. Raj Dani i/b Thodur Law Associates for the Petitioner.

Mr. J.P. Yagnik, A.P.P for the Respondent Nos.1 and 2.

Mr. Dhrutiman Joshi for the Respondent No.3.

**CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.**
DATE : 28th 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 notice on behalf of the respondent No.1 and 2. Mr. Joshi waives notice on behalf of the respondent No.3.
3. By this petition, the petitioner seeks quashing of the FIR bearing C.R. No. 51 of 2016, registered with the Dighi Sagari Police Station, Taluka Shrivardhan, Zilla Raigad, for the alleged offences punishable under Sections 353, 107, 506 r/w 34 of the Indian Penal

Code. Quashing is sought on the premise, that the respondent No.2 has no objection for quashing of the proceeding *qua* the petitioner.

4. Perused the papers. The petitioner was the promoter of a company viz. Dighi Port Limited as well as the Managing Director of the said Dighi Port Limited, when the alleged offence is stated to have taken place. The petitioner was also stated to be in-charge of the management of Dighi Port, Raigad, at the relevant time.

5. It appears that a notice dated 4th November, 2016 was addressed to the Dighi Port Limited by the Dighi Grampanchayat at Shrivardhan, for carrying out the inspection and measurement of the Dighi Port, Raigad, for the purposes of assessment of property taxes in accordance with the provisions of the Grampanchayat Act r/w the Notification dated 31st December, 2015 and the provisions of the Maharashtra Grampanchayat Tax and Fee Rules, 2015 (Revised). The said inspection and measurement was fixed on 8th November, 2016 at about 11.00 a.m. According to the respondent No.3 (original

complainant), he and his officials visited the Dighi Port premises on 8th November, 2016, for the purpose of inspection and measurement, to determine / assess property taxes. It appears that measurement was carried out in seven out of the eight building structures located in the Port premises. It is alleged by the respondent No.3 (original complainant) that when he and other officials visited the 8th building structure, where the warehouse was located, he and his team were prevented from carrying out the measurement. The respondent No.3 has stated that four persons i.e. security guards (not the petitioner) engaged in a verbal dispute with them and even threatened them, pursuant to which, the aforesaid C.R. was registered, as against the said four security guards (not the petitioner).

6. Admittedly, the petitioner has not been named in the FIR, nor is there any allegation in the FIR, that the petitioner interacted on phone with the respondent No.3 or that the petitioner either threatened / abused respondent No.3 and others. During the course of investigation, the petitioner was also made an accused in the

aforesaid C.R. inasmuch as, according to the police, it was at the behest of the petitioner that the said security guards had prevented the respondent No.3 and others, from entering the premises /warehouse.

7. After investigation, chargesheet was filed and the case is presently pending before the learned Judicial Magistrate, First Class, Shrivardhan, being Criminal Case No. 83 of 2017.

8. Learned Counsel for the petitioner does not dispute the fact, that the petitioner spoke to the security guards. He, however, submits that the petitioner had asked the security guards to request the respondent No.3 and other officials to defer the inspection and measurement of the 8th building structure warehouse, till such time that the said Muricate of Potash (MOP) was cleared from the said warehouse or atleast till such time, the officers of the Dighi Grampanchayat procure adequate equipment to safeguard themselves from the possible adverse risks, due to exposure to (MOP), stored in the 8th building warehouse. Learned Counsel for the petitioner relied

on documents to show that on 8th November, 2016, the said MOP was stored in the warehouse. He has also annexed the Material Safety Data Sheet evidencing the safety procedures to be followed whilst handling the MOP. He submits that the petitioner, out of concern, had asked the personnel i.e. security guards to request the officers to defer the inspection for the reasons aforesaid. Learned Counsel for the petitioner submits, that according to the respondent No.3, the security guards (four) who were present there, abused him and other officials. He submits that the act of the four security guards, who were present at the spot, cannot be attributed to the petitioner, who was not present at the spot.

9. As noted above, admittedly, the petitioner was not present at the spot and hence not named in the FIR lodged by the respondent No.3. As far as, Section 353 of the Indian Penal Code is concerned, the same would not apply *qua* the petitioner, inasmuch as, the petitioner was not even present at the time when the alleged incident took place nor is there any material to show that the petitioner either

spoke/threatened the respondent No.3. Section 353 speaks about assault or use of criminal force to any person being a public servant in the execution of his duty, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as a public servant. What was disclosed by the petitioner to the guards and what actually transpired at the spot, by no stretch of imagination, can be attributed to the petitioner nor can the petitioner be held responsible for the acts of his security guards.

10. It is pertinent to note, that subsequently, when inspection was carried out by the respondent No.3, it was found that the said warehouse was used for storing MOP, a hazardous chemical.

11. Even having regard to what is stated above, Section 506 of the Indian Penal Code would not apply, *qua* the petitioner, inasmuch as, the petitioner was admittedly not present at the spot, at the time of the incident. There is not a whisper in the FIR as against the

petitioner.

12. Infact, the respondent No.3, in his affidavit-in-reply dated 10th August, 2022, duly affirmed before the notary in paras 3 and 4 has stated as under;

“3. I say that at the relevant time, the officials of the respondent No.4 which included myself carried out inspection of 7 out of 8 building structures located in the Dighi Port premises on 08.11.2016 but could not carry out the inspection in respect of the 8th Building structure which is a warehouse located in the Dighi Port premises as the said warehouse at the time was being used as storage premises for a purportedly Hazardous Chemical namely Muriate of Potash (MOP).

4. I say that pursuant to perusal of Daily OPS report of Dighi Port dated 08.11.2016 marked as Exhibit A (more specifically at page 26 to 28) in the present petition it is indeed accurate that the said Muriate of Potash (MOP) was being stored at the said warehouse of Dighi Port.”

13. In para 5 of the said affidavit, the respondent No.3 has stated that he has no objection to the relief i.e. of quashing the proceeding, being granted, *qua* the petitioner.

14. Considering what is stated hereinabove i.e. both, on merits

and having regard to the no objection of the respondent No.3, the petition ought to succeed.

15. Accordingly, we pass the following order;

ORDER

(i) Criminal Writ Petition No. 5533 of 2018 is allowed.

(ii) The proceeding being Summary Criminal Case No. 83 of 2017 (wrongly mentioned as Case No. 83 of 2016 in the prayer clause) pending before the learned Judicial Magistrate, First Class, Shrivardhan, for the alleged offences punishable under Sections 353, 107, 506 r/w 34 of the Indian Penal Code, arising out of C.R.No. 51 of 2016, registered with the Dighi Sagari Police Station, is quashed and set aside, *qua* the petitioner.

16. Petition is disposed of accordingly.

17. All parties to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.