

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL WRIT PETITION NO. 345/2022

Irshad Khan Iqbal Khan
A/a 38 years, occu: Business
R/o Sai nagari, Wani
Tah.Wani, Dist. Yavatmal.

..Petitioner

versus

1) State of Maharashtra
Through PSO PS Shirpur
Dist. Yavatmal.

2) Anil Haribhau Surpam
Aged 37 years, occu: service
R/o Government Police Quarter
Shirpur P.S. Shirpur
Dist. Yavatmal.

3) Pradip M.Patil
Sub-Divisional Police officer
Pandharkawada, Distt. Yavatmal.

..Respondents

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Mr.A.A.Dhawas, Advocate for the petitioner
Mr.V.A.Thakre, APP for the respondent 1

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CORAM: ROHIT B. DEO & ANIL L.PANSARE, JJ.
DATE OF RESERVING : 7th September, 2022.
DATE OF PRONOUNCEMENT : 4th October, 2022.

JUDGMENT: (Per: ANIL L.PANSARE, J.)

Rule. Rule, returnable forthwith. Heard finally.

2. By this petition, the petitioner has sought the

following reliefs :-

“(A) To call for the record and proceedings of Crime No.0254/2021, u/s 379 r/ws.34 of the India Penal Code registered against present petitioner by PSO Shirpur, Dist. Yavatmal and to issue necessary directions, orders to quash the above said FIR dated 24/09/2021 in the above said crime and further be pleased to quash charge-sheet bearing RCC No. 39/2022 pending on the file of learned Judicial Magistrate, First Class, Wani Dist. Yavatmal against the petitioner.

(B) During the pendency of this petition further proceeding of case bearing RCC No. 39/2022 pending on the file of learned Judicial Magistrate, Fist. Class, Wani, Dist. Yavatmal may be stayed.

(C) To issue necessary writ, direction or order to initiate departmental enquiry against respondents as per law for illegally framing the petitioner in the aforesaid crime and for violating his fundamental right and further be pleased to hold respondents liable for damages and compensation to be paid to the petitioner.

(D) To direct the respondents to pay jointly or severally damages and compensation to the petitioner to tune of Rs. 10,00,000/- each for falsely implicating them in a serious criminal case patently on false grounds.”

3. During the course of arguments, learned APP has submitted that the petitioner had earlier filed a

petition bearing writ petition No.181/2022 seeking quashment of FIR under question. However, the petitioner has withdrawn the petition without seeking leave to challenge the FIR or charge-sheet before this court and that the said fact has been suppressed by the petitioner. In response, Mr. A.A.Dhawas, learned Advocate for petitioner has drawn our attention to paragraph 7 of the petition which, according to him, discloses the status of the earlier petition. Para no.7 reads thus:

“7. That on 16/02/2022 the petitioner had earlier filed Cri W.P .No.181/2022 challenging the FIR and compensation. However, in the meanwhile, charge-sheet came to be filed on 02.03.2022. Hence, on 31.03.2022 the petition came to be withdrawn and thereafter fresh petition is being filed challenging the charge-sheet. The petitioner has not approached either this Hon’ble Court, or the Hon’ble High Court or the Supreme Court of India at any point of time earlier in the matter in respect of the present crime and action sought to be taken against respondent no.3, except above petition.”

4. The order dated 31st March 2022 has not been annexed with this petition. The learned APP has handed over

to us the copy of the said order, which reads as under :-

“ *Learned Advocate for the petitioner submits that he had instructions to withdraw the present petition.*

*2. The writ petition is **dismissed** as withdrawn”.*

5. The pleadings in para 7, in our view, do not disclose true and correct picture. The petitioner has made an attempt to indicate to the Court that he has sought permission to withdraw the petition challenging the FIR on the ground that pending petition the charge sheet came to be filed on 2nd March 2022 and, therefore, the petition has been withdrawn to file fresh petition to challenge the charge-sheet. The pleadings in para no.7, in our view, are misleading. The order dated 31st March 2022 does not disclose that the petitioner sought liberty to challenge the charge-sheet. The petition has been dismissed as withdrawn. The word ‘dismissed’ is highlighted. It clearly indicates that the Court was not with the petitioner and, therefore, the petitioner has withdrawn the petition without seeking any leave to file fresh petition to

challenge the charge-sheet. We deprecate such practice and by this order we put Mr. Dhawas on notice that if in future it is noticed that such misleading statement is made, this Court will take a serious view against him. We are saying so, because Mr. Dhawas strenuously made an attempt to justify his stand. Mr. Dhawas ought to have annexed with the petition, the order dated 31st March 2022 to enable this court to understand the context in which the petition has been withdrawn. Suppressing the order and thereafter raising a plea that on 31st March 2022 the petition came to be withdrawn and thereafter fresh petition is being filed, would clearly depict a picture that earlier petition was withdrawn without liberty to file fresh petition. Such pleading is nothing but an attempt to suppress the true fact. On this count itself, the petition is liable to be dismissed.

6. Even otherwise, what transpires from the charge-sheet is that on receipt of information on 23rd September, 2021, the informant police official who was on patrolling

duty, intervened a truck driven by the first accused Vishal Ashok Vaidya. He was transporting coal which according to the information received by the informant was illegal transportation of coal. During the course of interrogation, the first accused-Driver informed the I.O. that the coal has been loaded from Wani and thereafter the first accused gave evasive replies. The first accused did not possess any document permitting him to transport the coal. The first accused informed that the truck is owned by second accused i.e. present petitioner and that the coal was being transported at his instance.

7. It is the case of the prosecution that the first accused at the instance of the petitioner has stolen the coal from the mine at Wani and was being transported to the coal depot belonging to second accused i.e. petitioner. The second accused then sells it to outsiders. Both the accused failed to produce necessary documents before the investigating agency so also before this Court. Upon enquiry as to whether the

petitioner possesses license/permit for transportation of coal from authenticate source, Mr. Dhawas has referred to certain documents, none of which is a license/ permit to transport coal. First document is Udyam Registration certificate belonging to the firm of the petitioner, which is issued by the Ministry of the Micro, Small and Medium Enterprises. This document is not a license/permit to transport the coal. Mr.Dhawas has then referred to a tax invoice issued by Mahalaxmi Traders. The invoice is dated 27th November 2020 (the incident is dated 23rd September, 2021) which shows that the coal worth Rs. 3 lakhs was to be received by the petitioner at Wani by road. The details of vehicle, however, are not mentioned.

8. Thus, none of the documents show that the petitioner and his driver were authorized to possess the coal under question. It cannot thus be said that the respondents have committed any error in registration of the FIR or the charge sheet. The action in any event cannot be said to be an abuse of the process of law. The petitioner is bound to cooperate in the investigation. Instead, the petitioner has

made a prayer seeking directions to initiate departmental enquiry against the respondents and to compensate the petitioner to the tune of Rs 10 lakhs. This appears to us to be a pressure tactics adopted by the petitioner against the public servants, which attempt failed in earlier round of litigation when the petitioner had challenged the FIR with further prayer seeking compensation. We deprecate this practice as well and, therefore, proceed to pass the following order:-

ORDER :

The writ petition is dismissed with costs of ₹ 1,00,000/- (rupees one lakh) to be paid by the petitioner in the registry of this Court within fifteen days from the date of receipt of this order, which shall be transferred by the registry to the account of the Police Welfare Fund, Maharashtra.

Rule discharged.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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