

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 364 OF 2013**

1. Abdul Razak Jariwala
Aged 70 years.
2. Abdul Razak Ahmed Taufiq
Aged 68 years.
3. Mohammed Salim Bhivandiwala,
Aged 47 years,
All residents of Oscar Tower,
Dr. Nair Road, Mumbai Central,
Mumbai – 400 008.

...Petitioners

V/s.

1. Abdul Aziz Hasan
Residing at Oscar Tower,
Dr. Nair Road, Mumbai Central,
Mumbai – 400 008.
2. Pravin Babar,
Senior Inspector of Police,
Nagpada Police Station, Mumbai.
3. The Commissioner of Police,
Mumbai.
4. The State of Maharashtra
5. Shabbir N. Patel,
Oscar Tower, Shop No.7,
Ground floor, 28 Maratha Mandir Marg,
Mumbai – 400 008.

...Respondents

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Mr. Pawan Mali, for the Petitioners.
Mr. Prashant Pawar, for Respondent No.1.
Ms. Mahalakshmi Ganpathy, APP, for the Respondent Nos.2 to 4-State.
Mr. Emad Khan, for Respondent No.5.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 18th DECEMBER, 2023.

JUDGMENT [PER:- A. S. GADKARI, J]:-

1) By the present Petition under Article 226 of Constitution of India, Petitioners, accused in C.R. No.01 of 2013 dated 1st January, 2013 registered with Nagpada Police Station, Mumbai, under Sections 447, 427 read with 34 of the Indian Penal Code, 1960, have prayed for quashing of the said crime.

2) Heard Mr. Mali, learned Advocate for the Petitioners, Mr. Pawar, learned Advocate for Respondent No.1, Ms. Ganpathy, learned A.P.P. for Respondent Nos.3 and 4 and Mr. Khan, learned Advocate for Respondent No.5-landlord. Perused entire record produced before us.

2.1) Record indicates that, by an Order dated 7th February, 2013, Rule and interim relief was granted in favour of the Petitioners. As a consequence thereof, till date police have not filed chargesheet in the present case.

3) At the outset, Mr. Mali, learned Advocate for the Petitioners, on instructions submitted that, he is not pressing the present Petition against Respondent No.2, as he has been impleaded in his personal capacity. The said statement is accepted.

4) Perusal of record indicates that, the Respondent No.1 has

lodged present crime on 1st January, 2013. The Respondent No.1 was working as a watchman at Oscar Towers, near Wadia Noor Masjid, Mumbai Central, Mumbai. The Respondent No.5, who is the owner of the said building, had employed the Respondent No.1 as watchman therein.

4.1) It is stated in the F.I.R. that, the timing of duty of Respondent No.1 was from 8.00 a.m. to 7.00 p.m.. That, the Respondent No.5 had prohibited the residents of the said building from going to the terrace and lock was put on the door of the said terrace. The Manager of the said building namely, Mr. Shivdas used to keep watch on the said building from the C.C.T.V. cameras which were installed for keeping watch on the persons entering in the said building. On 31st December, 2012 at about 3.45 p.m., Manager Mr. Shivdas informed Respondent No.1 that, he saw on C.C.T.V. camera four persons had been to the terrace of the said building. The Respondent No.1, therefore along with Mr. Shivdas went to the terrace. He noticed the door of the terrace was opened and lock thereon was in broken condition. On the terrace, he saw Petitioners alongwith one unknown person taking measurement of the plastic water tank fixed thereon. When Mr. Shivdas questioned the Petitioners about breaking open the lock of the terrace, they admitted to have done it with a view to take measurement of the plastic tank fixed on the terrace. In this brief premise, present crime is registered.

5) A minute perusal of the F.I.R. indicates that, the words “असून

टेरेसचे दरवाज्यास कुलूप लावले आहे” i.e., a lock is put on the door of the terrace, have been inserted/added between paragraph Nos. 1 and 2, in the balance space available therein and it appears to us that, the same is inserted with a view to improve the case of the prosecution. Even otherwise, according to us, an offence under Section 447 of Indian Penal Code has no application to the present crime.

5.1) Record further indicates that, there are litigations pending between the Petitioners and Respondent No.5 *interse* on the civil side of this Court and in various other Courts including the City Civil Court at Mumbai. It is the very reason for the Respondent No.5, prompting Respondent No.1 to lodge present crime against the Petitioners to implicate them in it. Perusal of the F.I.R. indicates that, initially there was no lock to the said door, however, after effecting necessary improvements/insertions as noted above, the present F.I.R. is lodged to attract cognizable offence.

6) In view of the above, we are of the considered opinion that, continuation of the prosecution against the Petitioners at the behest of Respondent No.5, will be sheer abuse of process of law and none else.

7) We, therefore unhesitatingly quash and set aside C.R. No.1 of 2013 registered with Nagpada Police Station, Mumbai, by allowing Petition in terms of prayer clause (a).

8) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)