



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1107 OF 2023

Dilesh Chandrakant Shah

..... Petitioner

V/s.

The State of Maharashtra and Anr.

..... Respondents

Mr. Kamlesh Ghumre a/w. Ms. Sonali Jadhav, Mr. Sanket Patil for the Petitioner.

Mr. J. P. Yagnik, APP, for the Respondent-State.

Mr. H. S. Venegavkar a/w. Mr. Aayush Kedia and Ms. Priya Dubey for Respondent No.1.

Mr. Amit Kumar, Investigating Officer present.

**CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 5th SEPTEMBER, 2023.

P.C.:-

1) Heard Mr. Kamlesh Ghumre, learned counsel for Petitioner, Mr. Venegavkar, learned Counsel for Respondent No.2 and Mr. Yagnik, learned APP for Respondent-State. Perused record produced before us.

2) It is an admitted fact on record that, after completion of investigation of C. R. No.817/2020 registered with Kashimira Police Station, Thane (Rural) under Sections 420, 465, 468, 471, 34 of Indian Penal Code read with Section 3 (1)(f)(g) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Amendment, 2015,

the Investigating Agency had submitted 'C-Summary Report' in the Court of Additional Sessions Judge at Thane.

3) The trial Court by its Order dated 24th July 2023 has accepted the said 'C-Summary Report' as the Investigating Officer has come to the conclusion that, there is civil dispute regarding land between the complainant and the accused and therefore no *prima facie* case against Petitioner is found, to continue with the said case. It is found that, the said crime had given rise totally out of a civil dispute. As the Trial Court by its Order dated 24th July 2023 has accepted the 'C-Summary Report', Crime No. 817/2020 as of today does not survive.

4) By applying the principles of law enunciated by the Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.*, 2022 SCC Online SC 929, and in particular para No.253 thereof, investigation by Respondent No.2 of ECIR bearing No. ECIR/MBZO-II/24/2022/238 is not permissible and ECIR mentioned in prayer clause (a) of Petition needs to be quashed.

5) In view of above, Petition is allowed in terms of prayer clause (a).

6) At this stage Mr. Venegavkar learned counsel for Respondent No.2 on instructions submitted that, original Complainant is likely to challenge Order dated 24th July 2023 passed by the trial Court, accepting 'C-Summary Report' and if the said Order is either reversed or modified by

this Court, he may be granted leave to revive present Petition.

7) We accordingly grant leave to Respondent No.2 to file appropriate Application before this Court, if Order dated 24th July 2023 passed by the trial Court accepting 'C-summary Report' is reversed by the higher Court.

(SHARMILA U. DESHMUKH, J.)

(A. S. GADKARI, J.)