

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 6221 OF 2021****WITH****INTERIM APPLICATION NO. 2923 OF 2021**

Vijay Bhivajirao Palande

... Petitioner

V/s.

The State of Maharashtra

... Respondent

None for Petitioner.

Ms.M.H. Mhatre, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.****DATE : 17th February 2023.****P.C. :**

1. Learned A.P.P, on instructions from A.T.S. Mumbai submitted that, the trial arising out of CR No.40 of 2012 originally registered with Andheri Police Station, Mumbai and subsequently investigated by D.C.B., Unit-I has already commenced and the prosecution as of today has examined six witnesses.

2. In view thereof, the request of the Petitioner to quash and set-aside the Criminal proceeding bearing Case No. 517 of 2012 arising out of F.I.R. No. 40 of 2012 does not survive. As far as initiation of action against the Police Officers on the basis of the pleadings of the Petitioner is concerned, it appears to us that, the pleadings of the Petitioner in the Petition is in the form of his defence in the said trial arising out of CR No. 40 of 2012.

It is the settled position of law that, the defence of an accused in a crime cannot be tested/adjudicated in a proceedings under Article 226 of the Constitution of India as it involves disputed questions of facts.

3. In view thereof, nothing further survives in the Petition and the Petition is accordingly disposed off.

4. In view of disposal of Petition, Interim Application No.2923 of 2021 does not survive and is accordingly disposed off.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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