

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2150 OF 2022

Mr. Nana Dhondiba Desai and Ors. ..Petitioners
V/s.
State of Maharashtra and Anr. ..Respondents

Mr. Nana Desai Petitioner-in-person.
Mr. J.P. Yagnik, APP for Respondent No.1/State.
Mr. Shantanu Raktate a/w Mr. Amar Parsekar, Mr. Saurav
Katkar i/b Swarup Patil for Respondent No.2.

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2023.05.30
17:38:28 +0530

**CORAM : SUNIL B. SHUKRE AND
M.M.SATHAYE, JJ.**

DATE : 25th APRIL 2023

: JUDGMENT (PER: M.M.SATHAYE,J.):

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent No.1/State. Learned counsel for Respondent No.2 waives service. Heard finally by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (CrP.C.), the Petitioners are praying for quashing of FIR No. 49 of 2015 registered with Chandgad Police Station, District Kolhapur for offences punishable

under Sections 379, 411 read with Section 34 of the Indian Penal Code (IPC) and also for quashing of the consequent Criminal Case bearing RCC No. 65 of 2015 pending in the Court of J.M.F.C., Chandgad, District Kolhapur.

3. Office report shows that pursuant to interaction dated 02.06.2022, the Petitioner No.1 Mr. Nana D. Desai was found to be able to put forth his case appropriately before the Court and as such requirement of scrutiny by the Registrar under the Bombay High Court Appellate Side Rules, is duly passed by the Petitioner No.1. Accordingly, heard Petitioner No.1 Mr. Nana D. Desai, who appeared in person for and on behalf of all the Petitioners as their power of attorney holder.

4. Heard Mr. Yagnik, learned APP for Respondent No.1 - State and Mr. Raktate for Respondent No.2 original complainant/informant. Perused the record.

5. Petitioner No.1 has taken us through the averments in the FIR filed by the Respondent No.2 as well as other documents produced by him on record. It is the case of the Petitioners that Respondent No.2 along with other persons who are members of Chamber of Commerce, were demanding illegal amount of Rs.25,000/- from Petitioner

No.2, who refused to pay and therefore, Respondent No.2 has falsely implicated the Petitioners in this case. Be that as it may. Since this is a petition for quashing, we have to go by the averments in the FIR, considering them at face value.

6. Perusal of FIR dated 10.04.2015 shows that it is the case of Respondent No.2 that he has a *karkhana* by named Bell-steel Industries in the Industrial Estate at Shinoli. It is alleged that on 09.04.2015, at evening time when Respondent No.2 was strolling around the premises of his *karkhana*, he found that two couplings from his *karkhana* (worth Rs.5,000/- according to FIR) were missing. Therefore, it is alleged that he went to the Chamber of Commerce office and informed the committee members and they went to the The Petitioner No. 1's shop, who is a scrap dealer and inquired about it. It is alleged by Respondent No.2 that he found the two couplings in Petitioners' shop, which were stolen from his *karkhana*. So also it is alleged that some more stolen goods from one 'Dipanjali Metals' were also found in the shop of the Petitioners. It is alleged that when he inquired with Petitioner Nos. 1 to 3 about the presence of the alleged stolen goods in their shop, no satisfactory answers were received and therefore, the FIR was lodged against the Petitioner Nos. 1 to 3 and unknown people.

7. It is argued on behalf of the Petitioners that this FIR is based on assumption that the Petitioners have purchased goods stolen from Respondent No.2's *karkhana* and one Dipanjali Metals. It is argued that Respondent No.2 himself has acted as if he is an Investigating Officer and has already concluded the issue about alleged theft and on this conclusion of theft, the FIR is filed. It is further argued that the police or the investigating agency is supposed to look into the veracity of the claim before registering the FIR and without that being done, the impugned FIR is registered under Section 379 (theft) and 411 (receiving stolen property dishonestly) of IPC.

8. Per contra, learned counsel for Respondent No.2/informant opposed this petition contending *inter alia* that the averments in the FIR are sufficient to attribute specific role to the Petitioners and that coupled with material collected during investigation, is sufficient to show that the Petitioners must face trial.

9. Learned APP has taken us through the material collected during investigation.

10. Careful reading of Section 378 of IPC (defining theft), shows that whoever intending to take dishonestly any

movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Taking these allegation in the FIR at its face value, it is not disclosed therefrom, how the Petitioners have taken dishonestly the alleged two couplings from *karkhana* of Respondent No.2. The FIR is filed after Respondent No.2 has himself taken up a role of investigating agency by gathering people from Chamber of Commerce, directly going to the shop of the Petitioners who are scrap dealers, finding out the alleged stolen couplings and identifying them, asking questions to Petitioners and then not being satisfied with their answers. This all is done without involvement of actual investigating agency i.e. police. We fail to understand how the police have accepted this usurpation of role by a private citizen such as Respondent No.2. It is not the case that Respondent No.2 has lodged complaint against unknown persons after finding that certain goods were missing from his *karkhana* and then during investigation, the Petitioners are found to be in possession thereof with stolen goods identified and therefore, they are accused.

11. Also perusal of Section 410 of IPC (defining stolen property) shows that property, the possession whereof has been transferred by theft is stolen property, but if such property subsequently comes into the possession of a person

legally entitled to it, then it ceases to be stolen property. In the matter at hand, the averments in FIR do not disclose clearly, how the so-called lack of satisfaction of Respondent No.2 about possession of the goods in the shop of Petitioners, can have any bearing on the issue of Petitioners being legally entitled to possess those goods or otherwise. In other words, the necessary ingredients of 'stolen property' and its alleged receipt by the Petitioners dishonestly (Section 411 of IPC), are not at all fulfilled.

12. Another aspect worth noting is that the impugned FIR makes a reference to finding out certain goods allegedly stolen from Dipanjali Metals for which the Petitioners are accused. It is not case that this Dipanjali Metals have also filed any such complaint of theft. Overall, the manner in which Respondent No.2 has filed the impugned FIR and the manner in which its cognizance is taken, can not be sustained.

13. In view of the aforesaid facts and circumstances, we are of the considered view that this is a fit case to quash the impugned FIR and the consequent criminal case. The facts of this case, clearly cull-out a situation that falls in one of the exceptions carved out in the case of **State of Haryana v/s. C.**

Bhajan Lal reported in AIR 1992 SC 604. Therefore, the Petition deserves to be allowed.

14. Hence, we pass following order:

ORDER

1. The petition is allowed in terms of prayer clause (1), which reads as under:-

“Wherefore the petitioners most humbly pray that F.I.R.No.49 of 2015 & charge-sheet / complaint lodged by Respondent No.2 / original complainant within the Chandgad Police Station vide F.I.R.No.49 of 2015 and Charge Sheet U/S 379, 411 R/w 34 of I.P.C., please be quashed and set aside, on such terms & conditions, as this Hon’ble Court may deem fit & proper.”

2. Rule is made absolute in the above terms.

(M. M. SATHAYE, J.)

(SUNIL B. SHUKRE,J.)