

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

CRIMINAL WRIT PETITION NO. 3513 OF 2021

Hitesh Ashok Bhatia, Age :-40 Years, Occ:-Business,
Resident of Mumbai having address at 22, Lovedale
Apartments, 6th Floor, Minoo Desai Road, Colaba,
Mumbai, 400 005.

...Petitioner

Versus

1. The State of Maharashtra Through Azad Maidan
Police Station, Mumbai.
2. Jitenderkumar Keshavprasad Shukla Age:-66 Years.
Occ:- Business, Resident of 31 Bhaveshvar Darshan,
Altamount Road, Mumbai – 400 026.Respondents/Complainants

Mr. Karansingh Rajput a/w Mr. Ativ Patel, Mr.Harshad R. Vyas i/by AVP
Partners for the Petitioner.

Mr. K.V. Saste, APP For Respondent No.1/State.

Mr. Sarthak P. Shetty a/w. Mr. Rohin R. Chauhan i/by Mr. Krishna L.
Sarkate For Respondent No. 2.

CORAM	:	SUNIL B. SHUKRE AND M.M. SATHAYE, JJ.
Date	:	29th MARCH, 2023.

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

1. Rule. Rule made returnable forthwith. Learned APP waives service
for Respondent No.1/State. Learned Counsel appearing for Respondent

No.2/Complainant waives service. Taken up for final disposal by consent.

2. By this filed Petition under Article 226 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure 1973, (“CrPC” for short) the Petitioner is praying to quash F.I.R. No. 46 of 2021 registered with Azad Maidan Police Station, Mumbai for offence punishable under Section 341 of Indian Penal Code, 1860 (for short “IPC”) and consequent Charge-sheet filed with the Court of Metropolitan Magistrate, 64th Court, Esplanade Mumbai.

3. Heard both sides. Perused the record.

4. Perusal of the FIR dated 17th February, 2021 show that it is the allegation of Respondent No.2/Complainant that on 17th February, 2021 in the afternoon, when he had gone to his office which is a tenanted premises in building owned by Bhatia Trust, he found that a new iron gate was put up on the office door and it was closed with lock and it was found that new door was chained with the old door. It is further alleged that when Respondent No.2/Complainant inquired with the watchman of the building, he came to know that Petitioner/Mr.Hitesh Bhatia has put up the said new door & lock. The FIR also contains many other allegations of

earlier dispute about eviction of Respondent No.2/Complainant from the subject matter premises, for which civil proceedings were filed and even NC was registered. However, the said allegations about the earlier disputes are not at all connected with the present incident dated 17th February, 2021, from which the present criminal case has arisen and the Petitioner is charged with offence punishable under Section 341 of the IPC.

5. Learned Counsel for the Petitioner invited our attention to a supplementary statement of Respondent No.2/Complainant recorded on 23.02.2021 during the course of investigation in which, in the concluding paragraph, Respondent No.2/Complainant, in clear terms has admitted that he was and is in possession of subject matter office premises, held by him as tenant. It is stated that the office premises was already in his possession and the same is still in his possession. He submitted that this clear admission in the supplementary statement completely washes away the earlier allegation of wrongful restraint.

6. Even taking the allegation in the FIR, and subsequent supplementary statement of Respondent No.2/Complainant, at their face value, the offence of voluntarily obstructing Respondent

No.2/Complainant as to prevent him from proceeding in any direction in which he has right to proceed, is not constituted. The FIR is dated 17.02.2021 and the supplementary statement is dated 23rd February, 2021 recorded by Respondent No. 2 just 6 days after lodging of FIR, clearly admitting that the subject matter office premises was already in his possession and is in his possession even that day, clearly indicates that no offence is made out as contemplated under Section 339 of the IPC defining wrongful restraint.

7. The remaining allegations in the FIR about earlier incidents of dispute between parties arising out of rent possession such as eviction suit and nuisance for which NC was filed, are totally different causes and cannot be mixed with the present incident giving rise to the alleged crime.

8. In view of the aforesaid facts and circumstances we are of the considered view that the facts of this case fall in one of the categories provided in the judgment of **State Of Haryana & Ors vs Ch. Bhajan Lal And Ors** reported in **AIR 1992 SC 604**. With the allegations in the FIR and quality of material gathered during the course of investigation, in our opinion it will be abuse of process of law, if the Petitioner is made to face trial.

9. In that view of the matter, the Petition succeeds and we pass the following order :-

(i) The Petition is allowed and accordingly the F.I.R. bearing Crime No.46/2021 registered on 23.02.2021 with Azad Maidan Police Station, Mumbai for the offence punishable under Section 341 of the Indian Penal Code, 1860 and consequential proceedings pending before the Court of Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, are hereby quashed and set aside.

(ii) Rule is made absolute in the above terms. No costs.

[M.M. SATHAYE, J]

[SUNIL B. SHUKRE, J.]