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

WRIT PETITION NO. 3975 OF 2023

WITH

INTERIM APPLICATION (ST) NO.23394 OF 2023

IN

WRIT PETITION NO.3975 OF 2023

1. Mr. Jagannath Rajaram Parab
age- 63 years, Occ. : Nil
2. Mrs. Prajakta Jagannath Parab
Age- 51 years, Occ.: Housewife
both residing at Room No. 04,
Chandu Devrukhkar Chawl,
Deorukhkar Wadi, Chincholi
Bunder Link Road, Malad (West),
Mumbai – 400064.
Contact No. 9987305763
Email Id.:-

.. Petitioners

Vs.

1. The State of Maharashtra
Through Bangur Nagar Police Station
District – Mumbai
(F.I.R. No. 594/2023).
Copy to be served on
Public Prosecutor of High Court
of Judicature at Bombay
2. The Commissioner of Police,
Mumbai, office situated at
Dr. D. N. Road,
Opposite Crawford Market,
Fort, Mumbai- 400001.
3. Mr. Krishnakant Parshuram Chouhan
Age- 30 years, Occ.: Business
Flat No. 1303, 13th Floor,
Ostwal Orchid Building No.10

Near Galaxy Hospital, Kanakia
Road, Mira Road (East),
Thane- 401107.

Contact No. : 8369111536

Email Id.:-

4. Mr. Pramod Baliram Tawde
Sr. Inspector of Police

5. Mr. Rahul Kerba Bangar
(I.O. in CR. No. 594/2023)

6. Mr. Sarjerao Bajirao Jadhav
(To whom complaint letter dated
27/10/2023 marked
All having office at
27/10/2023 marked
All having office at
Bangur Nagar Police Station
CTS. No. 1406/22 B,
Telephone Exchange Building,
Opp. Mindspace Garden,
Malad (West), Mumbai- 400064.

.. Respondents

Mr. Manoj M. Chauhan for Petitioners.

Ms. Mahalakshmi Ganpathy APP for State.

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

DATE : 21st DECEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) The present Petition is filed under Articles 14, 19, 21, 226 & 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking to quash and set aside F.I.R. bearing No.594 of 2023 dated 3rd November, 2023, registered at Bangur Nagar Police Station, Mumbai for the offences punishable under Sections 380,

448, 454, 457 read with 34 of the Indian Penal Code.

2) Heard learned Advocate Mr. Chauhan for Petitioners and Ms. Mahalakshmi Ganpathy APP for State. Perused the Petition and the documents enclosed therewith.

3) Rule. The Rule is made returnable forthwith and with the consent of the parties, the Petition is taken up for final hearing.

4) The impugned F.I.R. has been registered on the report filed by Respondent No.3 wherein it is narrated that, Respondent No.3 had taken a room owned by the Petitioner No.2 on a monthly rent of Rs. 13,000/- for his business and personal use. The Leave & Licence Agreement was for 11 months. On expiry of the Leave & Licence Agreement in October, 2023, there was discussion for renewal, but the Leave & Licence Agreement could not be renewed.

4.1) On 2nd November, 2023, workers of Respondent No.3 went to their native place for *Diwali*. Respondent No.3 also went to his sister's house, at Thane, by locking the said room. On 3rd November, 2023, Respondent No.3 received a phone call from Thane Police and they informed that, Petitioner No.2 came at the police station and claims that Respondent No.3 has removed his belongings from the room and kept it outside. Respondent No.3 denied this fact and immediately, he went to his room. There, he found that, the lock of the room was broken open and his belongings were kept outside. On enquiry, the neighbour

informed that, the Petitioners and others broken open the lock of his rented room and kept his belongings outside. Then Respondent No.3 inspected his belongings and found that certain items like refrigerator, laptop, cash of Rs.12,000/-, steel *Almirah*, four empty cylinders, tables, TV, chairs, etc., were stolen. Hence, the said F.I.R. came to be registered against the Petitioners for the said offences.

5) Learned Advocate for the Petitioners submitted that, the Petitioners are falsely implicated in this case. The room was taken on rent only for residential purpose, however, it was used for commercial purpose. Respondent No.3 and his associates used to chit chat there in the night time. Respondent No.3 was also not paying the rent on time. Hence, Petitioner No.2 decided not to renew the Leave & Licence Agreement. Therefore, on 11th October, 2023, Petitioner No.2 gave a handwritten request letter to Respondent No.3 to vacate the room, but the room was not vacated. Therefore, on 27th October, 2023, Petitioner No.2 gave a letter to Bangur Police Station, Mumbai informing the above facts and requested to take necessary action. In the night of 1st November, 2023, Respondent No.3 and his associates started harassing the Petitioners and their neighbours. Hence, the matter was reported to the Police. Then, on 2nd November, 2023, the first informant removed his belongings from the room and kept it outside. As later on he did not come back to collect his belongings, Petitioner No.2 informed this fact to

the Police. However, Respondent No.3 lodged a false report of theft just out of vengeance. Thereafter, Respondent No.3 took his belongings away and vacated the room. Thus, the Petitioners are innocent. Hence, the impugned F.I.R. may be quashed and set aside.

6) Learned APP submitted that the contents of the F.I.R. clearly show that, the Petitioners have committed theft of the articles belonging to Respondent No.3. As such, there is a *prima facie* case against the Petitioners. Hence, the Petition may be dismissed.

7) In the F.I.R., Respondent No.3 has categorically stated that, only from the police he learnt that his belongings have been kept outside the room. However, prior to that his belongings were kept in the said room properly locked. There was no reason for Respondent No.3 to unnecessarily keep his belongings outside the room and go away. On the contrary, it being a *Diwali* period, it was natural that his workers would go to their native place for *Diwali* festival. Therefore, Respondent No.3 also locked the room and went to his sister's house on 2nd November 2023. However, behind his back, the Petitioners broken open the lock of the room and not only kept some articles outside the room but also committed theft of the articles stated above. The Petitioners intentionally did this just because the room was not vacated immediately after expiry of the Leave & Licence Agreement. Thus, there is a strong *prima facie* case against the Petitioners of having committed the offences stated in the

F.I.R.

8) Here it may be noted that the charge-sheet is already filed in this case against the Petitioners. As held in the case of *Manik B vs. Kadapala Sreyes Reddy*, (2023 LiveLaw (SC) 643), the scope of interference while quashing the proceedings under Section 482 of Cr.P.C. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. That it is not permissible for the Court to go into correctness or otherwise of the material placed by the prosecution in the charge-sheet.

9) Insofar as the submissions on behalf of the Petitioners are concerned, the same constitute their defence which can be examined at the time of trial of the offence. Examining truthfulness of the said defence in this Petition would amount to conducting a mini trial, which is not permissible in law.

10) In view thereof, we are of the opinion that, there is no substance in the Petition. Hence, the Petition is liable to be dismissed.

10.1) Writ Petition is accordingly dismissed.

10.2) In view of disposal of the Petition, Interim Application (stamp) No.23394 of 2023 pending therein does not survive and is also disposed of.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)