

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 86/2023.

Mr.Milan s/o Gopichand Jadhao,
Aged about 27 years, Occupation
Labour, resident of Manki [Aamba],
Post Chikhli, Taluka Darvha,
District Yavatmal.

... **PETITIONER.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Karanja, District Washim.

... **RESPONDENT.**

Mr. M. Deo, Advocate for the Petitioner.
Mr. V.A. Thakare, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE : MARCH 28, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally by consent of the learned Counsel appearing

Rgd.

for the parties. **Rule.** Rule is made returnable forthwith.

2. This is a petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking to quash the first information report bearing Crime No.819/2020 registered with Karanja Police Station, District Washim with Final Report in Regular Criminal case No.317/2020, for the offence punishable under Section 379 of the Indian Penal Code. Quashing is sought on account of total non-involvement and absence of material against the applicant.

3. At the instance of a report lodged by the informant dated 02.11.2020, the aforesaid crime came to be registered against unknown thief. The informant owns a two wheeler bearing Registration No.MH-31-BW-2354, which is of Hero Honda Passion-Pro make motorcycle. On 01.11.2020 around 8.30 p.m. the said motorcycle was parked near Hotel Adarsh, however, it was stolen from the said place, and therefore, the report against unknown person.

Rgd.

4. With the assistance of the learned Counsel appearing for the parties, we have gone through the entire final report filed by the police in terms of Section 173 of the Code of Criminal Procedure. With difficulty, we find some relevance of the applicant in the disclosure statement made by the co-accused Karan, at whose instance the stolen motorcycle was seized from streamlet. The police have arrested Karan and while he was in police custody, he showed his willingness to show the place where the stolen article was concealed. In accordance with that, Karan led the police party near streamlet from where the stolen motorcycle was seized.

5. While making disclosure statement the co-accused Karan stated that he along with the applicant, who is his maternal uncle, took the motorcycle and as fuel tank became empty, they abandoned the motorcycle. Though the accused Karan stated involvement of the applicant as his companion, however, the said statement made before the police is inadmissible. The said disclosure and panchnama in terms of Section 27 of the Indian Evidence Act can be used only

to the extent of knowledge of the maker to the fact disclosed, followed by confirmation in the shape of recovery of the article. By no stretch of imagination, it can be used against the co-accused. Though Section 30 of the Indian Evidence Act speaks that a confession made by the accused involving himself and another can be considered, however, the statement made to police cannot be considered as a confession. Barring said material, there is nothing against the present applicant, therefore continuation of trial against him would be an exercise in futility.

6. The Supreme Court in case of **State of Haryana .vrs. Bhajanlal – AIR 1992 SC 604** has laid down certain guidelines. The present case falls within the ambit of Clause 1 to 3 of the said guidelines. Moreover, possibility of conviction on existing material is remote and blink. In the circumstances, this is a fit case to invoke our inherent jurisdiction. Criminal Writ Petition is accordingly allowed.

The first information report bearing Crime No.819/2020 registered with Karanja Police Station, District Washim with Final

Report in Regular Criminal case No.317/2020 pending on the file of the Judicial Magistrate First Class, Karanja, for the offence punishable under Section 379 of the Indian Penal Code, is hereby quashed and set aside to the extent of the petitioner - Milan Gopichand Jadhao only. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE

Rgd.