



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1152 OF 2024

Revansiddha s/o Bhagwan Jadhav
Age: 45 years, Occu.: Business,
R/o. Shantiniketan Colony,
Akashwani Road, Trimurti Chowk,
Chhatrapati Sambhajanagar,
Taluka and District
Chhatrapati Sambhajanagar

.. Petitioner

Versus

1. The State of Maharashtra,
Through Police Inspector,
Jawahar Nagar Police Station,
Chhatrapati Sambhajanagar.
2. Sarika w/o Sachin Devkar
Age: 48 years, Occu.: Nil,
R/o. Flat NO.2, Aadarsh Complex,
In front of Bank of Maharashtra,
High Court Colony, Satara Parisar,
Beed Bypass, Chhatrapati
Sambhajanagar.

.. Respondents

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Mr. Vishwajeet R. Jain, Advocate for the Petitioner.

Mr. N. R. Dayama, APP for the Respondent No.1 – State.

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 13 AUGUST, 2024.

ORDER (Per Smt. Vibha Kankanwadi, J.)

. Present petition has been filed invoking the constitutional powers of this Court under Articles 226 and 227 of the

Constitution of India as well as the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. The petitioner has prayed for quashment and setting aside the FIR vide Crime No.47 of 2024 dated 17.02.2024 registered with Jawaharnagar Police Station, Chhatrapati Sambhajinagar, for the offences punishable under Section 427 and 448 of the Indian Penal Code.

2. Heard learned Advocate for the petitioner and learned APP for respondent No.1 – State. It is not even necessary to issue notice to respondent No.2.

3. It has been vehemently submitted on behalf of the petitioner that the petitioner is running his business in the name and style Hira Jewellers. The brother of the petitioner and petitioner had purchased land admeasuring 1059 square feet at Garkheda Road, Aurangabad. The brother of the petitioner was the owner and possessor of two shops and two floor building by left side, whereas the petitioner is the owner and possessor of two shops and two floor building and entire construction over third floor by right side. His brother had allowed the informant to do the work of artisan. Informant did not pay remuneration to the brother of

the petitioner. Due to lock-down, there was no business in the line of jewellers, therefore, the informant sustained losses. Informant informed the said fact to the brother of the petitioner that she would close her business and leave the shop. The FIR is false and concocted and afterthought. No such incident as narrated has taken place. She even alleges that 4 kg. Gold was not found when she went to the shop. This allegation is baseless. No record has been produced by the informant to show that she was possessing 4 kg. Gold. It would be a futile exercise to ask the petitioner to face the trial.

4. Learned APP strongly opposed the application and submitted that from the contents of the FIR offences are made out.

5. From the contents of the FIR as well as the contents of the petition it can be gathered that the petitioner is not disputing the fact that informant was the possessor of one of the shop premises prior to 01.01.2024. According to informant, on 01.01.2024, when she went to the shop, the petitioner had put lock/seal to the shop and, therefore, she made inquiry with him and at that time, the petitioner told her that they would sit across the table

and sort out the problem. She says that due to ill health she could not go to the shop for a considerable long time, but then she went to the shop on 14.02.2024. At that time, she found that the material belonging to her from the shop was kept outside the shop and her lock was broken. If the earlier possession is admitted, then unless it is shown by the petitioner that the possession was voluntarily given by the informant to him or to his brother, it cannot be said that there is no forcible dispossession. It is for the petitioner to prove at the time of trial that the possession was voluntarily handed over by respondent No.2 to the petitioner or to his brother or they have taken possession of the premises as by adopting due procedure of law. Therefore, when the burden is on the petitioner to prove these things, we do not find this to be a fit case where we should exercise our constitutional powers or inherent powers. The petition stands dismissed at the threshold.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm