



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1527 OF 2024

- 1) Rohidas S/o Rama Zende,
Age-62 years, Occu:Agriculturist,
R/o-Bramhangaon, Tq-Ashti,
District-Beed,
- 2) Vijay S/o Rohidas Zende,
Age-31 years, Occu: Grocer,
R/o-Ranjangaon Shenpunji,
Gandhi Nagar, Kamlapur Fata,
Taluka-Gangapur,
District-Chhatrapati Sambhajinagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the I.O. of Ashti Police Station,
District-Beed
of CR No.0296 of 2024,
- 2) The Investigating Officer,
Ashti Police Station, Ashti,
Taluka-Ashti, District-Beed,
CR No.0296 of 2024,
- 3) Ritesh S/o Bandu Zende,
Age-21 years, Occu:Agriculturist,
R/o-Bramhagaon, Taluka-Ashti,
District-Beed.

...RESPONDENTS

...
Mr. Hrishikesh V. Tungar Advocate for Petitioners.
Mr. V.K. Kotecha, , A.P.P. for Respondent Nos.1 and 2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 30th AUGUST, 2024

ORDER :

1. Present Petition has been filed for quashing the First Information Report (for short "the FIR") vide Crime No.296 of 2024 dated 17th July 2024 registered with Ashti Police Station, District-Beed for the offence punishable under Sections 118(1), 115(2), 352, 351(2), 351(3), 3(5) of the Bhartiya Nyay Sanhita, 2023. The petitioners also prays for direction to respondent No.2 to collect the CCTV footage dated 8th July 2024 from Rajlaxmi Bikaner Sweet Shop at Ranjangaon Shenpunji as well as from the office of Grampanchayat of Ranjangaon, Taluka-Gangapur, District-Chhatrapati Sambhajinagar.

2. Heard learned Advocate for the petitioners and learned APP for respondent Nos.1 and 2. It is not even necessary to issue notice to respondent No.3.

3. The FIR that is lodged on 17th July 2024 appears to be in respect of the incident alleged to have been taken place in the field of respondent No.3 at about 5.00 p.m. on 8th July 2024.

Now the ground on which the petitioners seek quashment of the FIR is that out of two petitioners, petitioner No.2 resides at Ranjangaon Shenpunji and he was in his village at the time of incident. Petitioner No.2 submits that he was at a fair price shop where his biometric was taken, so also in a sweet shop he had made some purchases where the CCTV was installed.

4. The first and foremost fact to be noted is that the investigation is still going on. Further, there cannot be collection of evidence on the directions of an accused. Therefore, no directions can be issued for collecting the evidence in the nature of CCTV footage.

5. Learned Advocate for the petitioners is relying on the decision in the case of ***Prashant Bharti vs. State of NCT of Delhi, 2013 All M.R. (cri) 1123 (S.C.)***, wherein, in Paragraph 19, it has been observed thus:-

"19. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* (Criminal Appeal No... 174 OF 2013, arising out of SLP (Crl.) no.4883 of 2008, decided on 23.1.2013) wherein this Court inter alia held as under:

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

6. Learned Advocate for the petitioners, therefore, submits that in view of the above decision, the steps be taken to determine the veracity of the prayer for quashing raised by the accused. The ratio laid down is definitely binding on this Court. However, it is to be noted that those observations and directions were in respect of exercise of powers under Section 482 of the Code of Criminal Procedure by this Court in the circumstances

and in respect of which the evidence is already placed by the accused. Here in the present petition, the petitioners have produced photographs of the CCTV footage and according to petitioner No.2, he had taken the CCTV footage from the owner of the shop in a pen drive and then it appears that he has taken the photographs. When in order to prove such electronic evidence the procedure will have to be followed, then we are of the opinion that it cannot be in the exercise of the powers of this Court under either Section 482 of the Code of Criminal Procedure or the constitutional powers. Further, in clear terms it can be stated that as regards the plea of alibi is concerned, the burden of proof is on the accused for which he may adduce the evidence at the time of trial.

7. As regards the quashment of the FIR under Section 482 of the Code of Criminal Procedure is concerned, in catena of Judgments the Hon'ble Supreme Court has specifically stated that such powers are required to be used sparingly. At the cost of repetition we would say that when investigation is still going on, the petitioners cannot ask for collection of evidence. At the same time, we would observe that certainly the investigation that should be carried out by the investigating officer, should be fair. The material which is before us is the only the FIR, in which

specific role has been attributed to both the petitioners and therefore, this is not a fit case where constitutional powers of this Court should be exercised.

8. Therefore, the Writ Petition stands dismissed at the threshold.

[SANDIPKUMAR C. MORE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG24