IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3045 OF 2015

Shri. Datta Damodar Naik,
Age: Adult, Occ.:Business,
Resident of Fountain Head, Marida,
Post Fatorda, Salsete, Madgaon, Goa,
Through his son Shri. Chirag Datta Naik
Age: Adult, Occu: Business
R/o.Address as mentioned above. .. Petitioner

Versus

1) The State of Maharashtra
(At the instance of Kankavali Police
Station vide their C.R.NO.3016 of 2015)

2) Shri.Vineet Vilas Kamble
Age: Adult, Occ.Business,
Resident of Room NO.7/B, 3rd Floor
Nandkarrni Building, Kankavali,
Dist. Sindhudurg. .. Respondents

Mr. Sanjeev P. Kadam for the Petitioner.
Mr. S. V. Gavand, APP, for the Respondent No.1-State.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.
RESERVED ON : 17th JANUARY 2024.

PRONOUNCED ON : 27th FEBRUARY 2024.

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

1) Petitioner, accused in F.I.R. No.3016/15 registered with Kankavali Police Station for the offences punishable under Sections 504 and

506 (I) of the Indian Penal Code read with Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 (‘*the Act*’, for short), has preferred this Petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, to quash the said F.I.R..

2) Heard Mr.S.P. Kadam, learned Advocate for Petitioner and Mr.S.V.Gavand, learned APP for Respondent No.1-State. Perused the record.

3) Record indicates that, by an Order dated 5th August 2015, notice was issued to the Respondent No.2 and it was directed that, no coercive action shall be taken against the Petitioner in respect of the subject F.I.R. Thereafter, notice was served upon the Respondent No.2, however, none appeared for the Respondent No.2 when Petition was taken up for hearing.

4) The impugned F.I.R has been registered on the report lodged on 17th July 2015 by the Respondent No.2 wherein he narrated that, the Petitioner is owner of M/s.Monginis Company (manufacturing franchise), at Goa. By an Agreement dated 1st September 2014, entered into between the Petitioner and wife of Respondent No.2, a retail franchise of Monginis company was given to the wife of Respondent No.2. Accordingly the couple started the Monginis bakery products shop, at Kankavali. The Petitioner, his father, his manager and supervisor etc. used to visit at the shop,

intermittently and impress upon the informant side that their every day business should be up-to Rs.50,000/-. They also used to roam in Kankavali and collect information of the Respondent No.2. As a result, the Petitioner and others learnt that the Respondent No.2 belongs to "*Mahar*" social status. Therefore, they used to blame that, as the Respondent No.2 and his wife belong to the lower social status, their business was not growing.

4.1) It is alleged that on 1st June 2015, at about 4.15 p.m., the Respondent No.2, his wife and their employee Mr. Numan were present in the said shop. At that time, the Petitioner, his Manager-Ashish Kejriwal and Supervisor-Pravin Kerkar with two elderly persons came there. The Petitioner inquired about the sell. The Respondent No.2 replied that it is about Rs.20,000/- per day. Thereafter they all came out of the shop. At this juncture, the Respondent No.2 asked the Petitioner as to when he would send new bakery products to him. The Petitioner replied that, he would see and instructed his manager to supply the new products at Malvan, Sawantwadi and Kudal. Therefore, again the Respondent No.2 asked the Petitioner as to when he would send the new products, however, the Petitioner abused the Respondent No.2 and his wife on their Caste just because they could not give a satisfactory business, and thus insulted them. Further, the Petitioner threatened that, he would cancel the Agreement and give the shop to other person to run, the Respondent No.2 may do whatever he want. However, to avoid losing of the business, the Respondent No.2 lodged the report belatedly on 15th July 2015. Hence, police registered the impugned F.I.R..

5) Learned Advocate for the Petitioner submitted that as per the retail franchise Agreement dated 1st September, 2014, retail franchise of Monginis bakery products was given to M/s.Albia Cake Shop owned by the wife of Respondent No.2. *Vide* said Agreement, the wife of Respondent No.2 was required to make payment for the goods by cheque, immediately after receipt of the goods. However, considering the new business tie-up, the wife of Respondent No.2 was given concession to issue post-dated cheques of two days later than the delivery of goods. Yet, the wife of the Respondent No.2 neither could honour her commitment nor could make the payment even after the extended time. On various occasions, the Respondent No.2 and his wife bought time in writing to clear the payments. However, on number of occasions the cheques issued by the wife of Respondent No.2 were dishonoured. Upon seeking explanations, the wife of Respondent No.2 gave an undertaking to clear the outstanding within particular time, however, in vain.

5.1) It is submitted that, at one point of time the outstanding were more than Rs.4 Lakh. Hence, in the meeting dated 27th March 2015 with the Proprietor, M/s.Albia Cakes was called upon to clear the outstanding, failing which the Petitioner's Company would take steps for termination of the Agreement as per clause 39 therein. However, the wife of Respondent No.2 failed to clear the outstanding and thus forced the Petitioner to issue the notice dated 10th April 2015 of termination of the Agreement after the statutory period of 30 days. Said notice was replied by M/s.Albia Cakes by its letter dated 16th May 2015. Thereafter, in June 2015 the wife of Respondent No.2 filed an application under the Arbitration Act, before the District Judge, at Sindhudurg and prayed for relief in view of clause 50 of the Agreement. Said application was replied by the Petitioner. Thereafter the Respondent No.2 filed the impugned F.I.R.

5.2) There is delay of 47 days in lodging the F.I.R. and said delay is not satisfactorily explained. There is no whisper in the Arbitration Application about the story narrated in the F.I.R. In the backdrop, said F.I.R. is nothing but an afterthought, vexatious, out of vengeance and falsely filed with an intention to pressurize the Petitioner to settle the monetary dispute between the parties. Hence, continuation of said F.I.R. would be abuse of process of law. As such, said F.I.R. may be quashed.

6) The learned APP submitted that, the text of the F.I.R. clearly shows that the Petitioner has committed the offences alleged therein. Hence, the Petition may be dismissed.

7) There is no dispute that, under the said Agreement retail

franchise of Monginis Bakery products was given to the wife of Respondent No.2 and said franchise business was to be conducted as per the terms and conditions stated in the said Agreement. This fact is evident from the said F.I.R. Moreover, the Respondent No.2 did not controvert this Agreement by filing his Affidavit-in-Reply.

8) As per Clause No.10 of said Agreement *i.e.* 'Terms of Payment', the payment between manufacturing Franchise and the Retail Franchise was against the delivery. But the letters (Exhibit B) clearly show that, more than Rs.5 Lakh were outstanding in March 2015 by the wife of the Respondent No.2, therefore, she had undertaken that she would give full attention to the business and increase the same. She also undertook to clear the dues of the company every Monday and Thursday. However, the notice dated 10th April 2015 indicates that, certain amounts were still outstanding and were to be paid by the 7 post-dated cheques, given in the meeting dated 27th March 2015. However, on continuous follow up, the wife of Respondent No.2 transferred an amount of Rs. 2,70,000/- by RTGS on 8th April, 2015 and an amount of Rs.2,16,572/- was outstanding. The notice also indicates that, there was no improvement in the business of the franchise, therefore, it was informed to the wife of Respondent No.2 that, the Agreement will be terminated *w.e.f.* 10th May 2015 invoking clause No.39 therein. These circumstances coupled with the text of the F.I.R.

indicate that, there was an issue between the parties herein on account of sale of the products and non receipt of goods' payment on time.

9) Undisputedly, the Arbitration case was filed prior to the lodgement of the F.I.R.. The copy of the Arbitration Application enclosed with the petition claims that, after commencement of the franchise, the Respondent No.2's wife proved that, she gave more business compared to other places. However, the Arbitration Application is completely silent about the outstanding till then and honouring of the cheques. That apart, the Arbitration Application mentions that, the wife of Respondent No.2 had taken huge loan for the franchise business and thus, was heavily indebted. Therefore, the wife of Respondent No.2 wanted that, the Petitioner should not cancel the retail franchise Agreement. As a result, she filed the Arbitration case seeking direction that until the resolution of the dispute between the parties, the Petitioner shall supply the goods as per the Agreement and not to appoint any other franchise.

10) In so far as the incident stated in the F.I.R. is concerned, very vague assertion is made in the Arbitration Application that, in the month of May 2015, the Petitioner raised an unreasonable doubt about the business capacity of the wife of Respondent No.2 and started saying that she being the member of lower social status, good customers do not turn to her shop. However, the date, time and place of that incident is not mentioned in the

Arbitration Application nor about the presence of others as stated in the impugned F.I.R. The Arbitration Application claims that, some political persons requested the Petitioner to give them the franchise in Kankavali, therefore, the Petitioner has been trying to discontinue the franchise of the wife of Respondent No.2, however, this fact is not stated in the impugned F.I.R. Very unusual conduct has been attributed to the petitioner in the Arbitration Application that, even though the wife of Respondent No.2 gave good business in quick time, the Petitioner wanted to disconnect the said franchise to give it to another. The F.I.R. is silent as to when and from whom the Petitioner learnt about the social status of the Respondent No.2. There is great delay in lodging the F.I.R. Thus, the record indicates that, the impugned F.I.R. is a result of business dispute and an attempt to prevent the Petitioner not to cancel the retail franchise Agreement so that the business of the Respondent No.2 is not ruined. Thus, the impugned F.I.R. is lodged with an oblique intent.

11) As observed in the case of *Iqbal alias Bala and Othrs Vs. State of U.P. and Othrs.*, reported in 2023 SCC Online SC 949, whenever an Application under Section 482 of Cr.P.C. or a Petition under Article 226 of the Constitution seeks the F.I.R. or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance,

then in such circumstances the Court owes a duty to look into the F.I.R. with care and a little more closely. Because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the F.I.R./complaint is very well drafted with all the necessary pleadings disclosing the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the F.I.R./Complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vaxatius proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

11.1) Considering the facts and circumstances of the case in hand, the above observations of the Apex Court are clearly applicable to it.

12) In view of the above discussion, continuation of the impugned F.I.R. would amount to abuse of process of law. Hence, said F.I.R. is liable to be quashed and is accordingly quashed and set aside.

13) Petition is allowed in terms of prayer clause (b).

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**