

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.497 OF 2017

Nand Gobindram Kimtani
aged 52 years, Indian Inhabitant
having office at Kala Palace,
Ground Floor, Madhuban Hotel Road,
Ulhasnagar – 421 001

.. Petitioner

vs.

1) State of Maharashtra
at the instance of Nizampura
Police Station, Bhiwandi

..

2) The Commissioner of Police,
Near Kalwa Bridge,
Thane (W), Thane

..

3) Ramesh Papa Rathod
aged 50 years, residing at
Room No.2, Siddhi Vinayak
Chawl No.3, Nandivili Village,
Kalyan East, Dist. Thane

.. Respondents

Mr. Subhash Jha (Through VC) i/b Law Global for the Petitioner.

Mr. Ajay S. Patil APP for the Respondent-State.

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

RESERVED ON : 22nd DECEMBER, 2023

PRONOUNCED ON : 23rd FEBRUARY, 2024

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

- 1) Present Petition is filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code ('*Cr.PC.*', for short), for quashing of F.I.R. being C.R. No.I-147/2016, registered with Nijampura Police Station, Bhiwandi, District Thane for the offences punishable under Sections 307, 328, 420, 120B, 504, 506 of Indian Penal Code against the Petitioner.
- 2) Heard Mr. Jha, learned counsel for the Petitioner and Mr. Patil, learned APP for Respondent-State. Perused the record and Affidavit in Reply of Respondent No.3 filed on 14th November 2017. Despite notice, none appeared for the Respondent No.3 when the matter was taken up for final hearing.
- 3) Record indicates that Rule was issued on 14th February 2017 and it was directed that no action shall be taken on the basis of the F.I.R. till further orders. *Vide* Order dated 11th July 2017, as requested by the Respondent No.3, registry was directed to appoint an Advocate from legal aid panel to appear on behalf of the Respondent No.3. Accordingly, Mr.A.G. Toraskar, Advocate was appointed for Respondent No.3 who filed the said Affidavit in Reply dated 15th November 2017. Thereafter, Mr.Vinay J. Bhanusali, Advocate was appointed as legal aid for representing the

Respondent No.3. However, *vide* Order dated 21st November 2022, the Respondent No.3 circulated the Petition but remained absent. This conduct was deprecated by the Court.

4) Facts giving rise to this Petition, are as under :-

4.1) On 8th September 2016, the Respondent No.3 lodged a report with Nizampura Police Station, Bhiwandi, District Thane wherein he has narrated that, between the period 2010 and January 2013, he was working as a Supervisor with the Petitioner on the latter's construction site, at Millat Nagar, Bhiwandi, on monthly salary of Rs.11,000/-. As various kinds of works of the construction were going on at the site, the workers were working day and night and, accordingly, the labourers were paid their wages and *bhattas*. However, Rajesh Budhwani, Account's Manager, being close to the Petitioner was paying meager amount of wages and *bhattas* to workers and he was misappropriating balance amount for himself, therefore, the workers got annoyed. When the Petitioner came to know about this fact, he removed his two employees, namely, Firoz and Parvez. Therefore, Rajesh Budhwani and few other employees of the Petitioner got angry and they started suspecting the Respondent No.3.

4.2) On 15th June 2012, Rajesh Budhwani, Manoj Lulla and Arjun Harisinghani arranged a party at Malhar Dhaba, Bhiwandi and caused

Respondent No.3 to join the party. At that time, the trio mixed some stupefying substance in the meal of Respondent No.3 to get rid of him.

4.3) On 21st June 2012, Sameer Naik, Rajesh Budhwani, Manoj Lulla and Arjun Harisinghani hatched a conspiracy to kill Respondent No.3. On 27th June 2012, at about 4:45 p.m., the Respondent No.3 was inspecting construction near A-1 Building, which was under construction. At that time a dumper bearing registration No.MH-04-DD-1474, driven by Ramesh Pawar, gave forcible dash to Respondent No.3 from behind. As a result, the Respondent No.3 sustained injury and become unconscious. At about 6 pm, the Respondent No.3 regain consciousness when he learnt that all workers have left. At that time, Respondent No.3 met one Girish Seth and watchman Raja Patil and enquired about why he was not taken to the hospital. Girish told the Respondent No.3 to collect money from Rajesh Budhwani and get the medical treatment. Thereafter, the Respondent No.3 contacted Rajesh Budhwani and enquired with him. At that time, the latter threatened him not to complain to the Petitioner and told that one who does not cooperate with him, he will ruin his life and he gave Rs.100/- to the Respondent No.3.

4.4) On the next day, the Respondent No.3 had undergone X-Ray which revealed fracture to fifth rib. Then, the Respondent No.3 contacted Girish Seth, who gave Rs.1500/- and prevented the Respondent No.3 from

complaining to the police. Thereafter, the Respondent No.3 contacted Bhiwandi Police Station, where the police suggested him to lodge complaint with *Nadinaka* Police Chowky. Thereafter, the Petitioner went to a private clinic and took medical treatment. After 7-8 days, Rajesh Budhwani and the Petitioner phoned the Respondent No.3 and asked him that he should not worry and they would bear expenses of the accident. Then the duo sent Rs.2,000/- to the Respondent No.3 but thereafter Respondent No.3 was in much pain, therefore, he went to Meera Hospital, where the doctor told him that the medical treatment would cost him Rs.10,000/-. Thereafter, the Respondent No.3 contacted Girish Seth, however, no one gave him money for his medical treatment.

4.5) Thereafter, the Respondent No.3 resumed work and started doing light work, however, his work site was changed, time and again. Thus he was mentally harassed. Thereafter, the Respondent No.3 met the Petitioner and complained as to how Rajesh Budhwani, Arjun Harisinghani and Manoj Lulla attempted to cause his murder, therefore, the Petitioner gave Rs.5,000/- to the Respondent No.3 and allowed him 15 days leave. Then, on 1st January, 2013 the Respondent No.3 resumed his work, however, Rajesh Budhwani and Girish told him to come after 5 days. Then, on 5th January, 2013, the Respondent No.3 again went to resume his work. At that

time they said that he is removed from work, however, they would give him one month's salary, hospital expenses and other employment. On 9th January 2013, Girish Seth told him that, he has been removed from work and gave him two cheques of Rs.11,000/- and Rs.6,000/- respectively and assured to provide him medical help and other employment. However, Girish Seth and others avoided their responsibility to pay the medical expenses to the Respondent No.3 and give him another employment. Thereafter, the Respondent No.3 tried to meet the Petitioner but on 9th February 2013, Rajesh Budhwani threaten him that if he complain about their faulty construction to anyone, he will loose his family. Thereafter, the Respondent No.3 lodged a complaint with Nijampura Police Station which was registered as N.C.No.337/2013.

4.6) Thereafter, the Respondent No.3 approached certain political persons including higher Police Authorities including the office of Chief Minister. Hence, police took the necessary action. As a result, the Petitioner and other accused persons named in the F.I.R., agreed to pay Rs.5,00,000/- as compensation to the Respondent No.3. However, thereafter, the Police disposed off the report/complaint of the Respondent No.3 by recording statement of the Petitioner. Even though the Petitioner had assured to give Rs.5,00,000/- as compensation, he gave Rs.75,000/- only. Thereafter, the

Petitioner denied the Respondent No.3 to resume work and driven him out. Therefore, the Respondent No.3 gave a letter dated 8th August 2014 to certain political authority for registering the offence. In turn, the other political authorities were informed to do the needful. Hence, ultimately the police registered the impugned F.I.R.

5) Learned counsel for the Petitioner submitted that, even though it is alleged that Sameer Naik was party to the conspiracy hatched on 15th June 2012, he was out of India on that day. It appears that, initially Respondent No.3 lodged a complaint with Nijampura Police Station, Bhiwandi. Hence, the Petitioner was called at the said Police Station by summons dated 14th June 2013. Accordingly, the Petitioner attended the police station and police recorded his statement (Exhibit-C and Exhibit-D). Thereafter, the Petitioner and his staff members were continuously harassed and black mailed in pursuance of false and vexatious complaint lodged by Respondent No.3 with Nizampura Police Station. Therefore, the Petitioner lodged complaint dated 31st January, 2014 (Exhibit-E) against the Respondent No.3.

5.1) It is submitted that, the then Investigating Officer Mr. K. K. Rathod attached to Nizampura Police Station was repeatedly calling the Petitioner at the instance of the Respondent No.3. Finally, on 3rd March 2014, the Petitioner was made to sit in the Police Station till evening and

told to compensate the Respondent No.3 by paying Rs.75,000/- towards full and final settlement. Hence, the Petitioner paid Rs.75,000/- to the Respondent No.3 (Exhibit-F). In turn, the Respondent No.3 informed the police in writing that the matter has been amicably settled and he has no grievance against the Petitioner and others (Exhibit-G). It is stated that, after settlement as above, detailed statement of the Respondent No.3 was recorded and complaint dated 27th December 2013 was closed (Exhibit-I).

5.2) However, the Respondent No.3 disputed with the Petitioner, hence the latter lodged a complaint (Exhibit-H) against him. Yet the police harassed the Petitioner for settling the matter, therefore, on the report of the Petitioner, ACB Office took necessary action on 25th October 2016 and registered F.I.R against the investigation officer of this crime (*vide* Exh-K).

5.3) Lastly, it is submitted that, there is inordinate delay in registering the impugned F.I.R. against alleged incident dated 27th June 2012. From the facts of the case it is apparent that present F.I.R. is nothing but an attempt of the Respondent No.3 to extort money from the Petitioner with help of police by involving politicians. As such, continuation of said F.I.R. would amount to abuse of process of law.

6) Per contra, learned APP submitted that, considering the text of the F.I.R., there is *prima facie* case against the Petitioner.

7) On careful consideration of the record, it indicates that, even though the Respondent No.3 alleged that on 15th June 2012 he was caused to consume food containing stupefying substance, he did not lodge the complaint of the said incident immediately, after he regain consciousness. The Petitioner was not directly or indirectly involved in the said incident.

8) The Respondent No.3 alleged that, on 27th June 2012, the dumper dashed him twice, however, he suffered only fracture to his rib and there was no injury to other parts of body. Moreover, there is no material showing that said dash was at the instance of the Petitioner.

9) The F.I.R. indicates that, after the alleged incident dated 27th June 2012, from time to time the Petitioner or his employees provided the monetary help to the Respondent No.3. Finally, the Respondent No.3 settled the matter with the Petitioner by accepting Rs.75,000/- towards full and final settlement. This fact is also mentioned in the affidavit in reply filed by the Respondent No.3. However, the impugned F.I.R. was lodged belatedly. That apart, the F.I.R. (Exhibit-K) indicates that, as there was demand of illegal gratification to favour the Petitioner in this crime, on his complaint, the ACB registered a crime against the investigation officer of this crime. Thus, the impugned F.I.R. is nothing but a result of *malafide*. It is vexatious and on account of personal vengeance. Hence, continuation of said F.I.R.

would be abuse of process of law. As a result the impugned F.I.R. is liable to be quashed and is accordingly quashed and set aside.

10) Writ Petition is allowed in terms of prayer clause (a).

10.1) Rule is made absolute.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)