

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3831 OF 2023**

Meraz Safeek Khan

...Petitioner

Versus

The State of Maharashtra

...Respondent

....

Mr.Satyaprakash Sharma a/w Mr.Rupesh Dubey i/by Mr.Jitendra Mishra, Advocates for Petitioner.

Ms. K. T. Hiwrale, APP for the Respondent – State.

Mr.Ashutosh Mishra i/by Abhishek Mishra, Advocate for Respondent No.2.

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**CORAM : PRAKASH D.NAIK &  
N. R. BORKAR, JJ.**

**DATE : 18<sup>th</sup> APRIL 2024**

**P.C.:-**

1. The petitioner is arraigned as accused in FIR dated 2<sup>nd</sup> November 2023 registered with Sewree Police Station, Mumbai vide C.R. No.211 of 2023 for offences punishable under Sections 407 read with 34 of the Indian Penal Code, 1860.

2. The FIR was registered at the instance of Respondent No.2. It was alleged that, the complainant is proprietor of M/s. Khan Roadlines situated at Kalamboli Steel Market, Navi Mumbai. He is involved in business of transport. He has nine Motor Trailers and deliver goods in the nature of

steel and iron as per orders at various places. On 31<sup>st</sup> October 2023, the complainant received order for transporting 32 tons of iron rods from his transport company to the constructions site at Andheri. The goods were loaded on Truck No.MH-04-AR-7156. The accused was assigned the duty of driving the vehicle. The vehicle was loaded with the goods and the accused was instructed to deliver it at the decided destination. The vehicle left Kalamboli at 11:00 p.m. on 31<sup>st</sup> October 2023. On 1<sup>st</sup> November 2023, the complainant received call from Sewree Police Station and he was informed that his vehicle was stationed near Coal Depot Parking Shed and goods from the motor trailer were being offloaded. The police went to the spot. The accused managed to run away. The goods were lying in the vehicle and the spot. The police collected them. The complainant tried to contact the driver (accused). He could not establish contact. FIR was registered.

3. The petitioner and respondent No.2 has contended that, the FIR can be quashed with the consent of respondent No.2. The affidavit of complainant consenting for quashing FIR has been annexed to the petition.

4. Learned APP submitted that investigation is in progress. Goods does not belong to complainant. He is a transporter. Goods were sold to SKAF by SKM. Statement of Vijendra Chaurasiya is recorded by police. FIR may not be quashed.

5. The petition was heard on 22<sup>nd</sup> January 2024. It was submitted before the Court that parties have settled the matter amicably. This Court directed that, matter is settled and no coercive action shall be initiated against the petitioner. On 29<sup>th</sup> January 2024, the prosecution submitted that, petitioner has been interrogated. During interrogation it was revealed that, respondent No.2 is not the owner of goods. The goods belong to Metro Authority. Respondent No.2 is the owner of vehicle in which the goods were transported. In view of submission of prosecution the Court noted that the matter cannot be quashed with consent. It was directed to be listed on 20<sup>th</sup> February 2024.

6. Pursuant to order dated 29<sup>th</sup> January 2024, the petitioner filed affidavit dated 19<sup>th</sup> February 2024 stating that prosecution had contended before this Court that the goods belongs to Metro Authority and on the basis of such submission this Court had passed an order dated 29<sup>th</sup> January 2024. The petitioner contacted respondent No.2, who confirmed that the goods do not belong to Metro Authority but to M/s. SKM Constr (A division of SKM Steels Ltd.) and they assigned the work of transporting subject goods to Andheri. The respondent No.2 has obtained letter dated 30<sup>th</sup> January 2024 from M/s. SKM Constr, who has confirmed the fact that the subject goods belong to them and they had assigned the work of transporting goods to the respondent No.2. Reliance was placed on the

letter dated 30<sup>th</sup> January 2024. In the said letter it was stated that, M/s. SKM Contra are involved in the business of steel manufacturing and trading with reference to issues pursuant to crime registered against one of them logistic partners. They had consigned goods of various quantum and qualities and handed over to their logistic partner Mr.Sainullah Akram Hussain, the vehicle used for transport belonged to Mr.Sainullah Hussain. In order to transport the goods, they considered it appropriate to opt for truck of Mr.Sainullah Hussain and accordingly vehicle motor trailer No. MH-04-AR-7156 was allotted to them at Kalamboli Steel Market. The said vehicle was loaded with steel rods and left from Kalamboli on 31<sup>st</sup> October 2023. The goods were loaded on the vehicle belongs to them and they do not have any grievance pursuant to the said incident. It was further stated that, the aforesaid letter was annexed to the application for anticipatory bail preferred by petitioner. The police did not make any statement in their reply to the anticipatory bail application that the goods belong to the Metro Authority. The Sessions Court granted interim relief to the petitioner. Reply dated 3<sup>rd</sup> February 2024 filed by police was annexed to the said affidavit. It was also stated that petitioner has attended the police station regularly. No inquiry was made from him. On 9<sup>th</sup> February 2024, the Investigating Officer filed another reply to the application for anticipatory bail with same contentions as were reflected in the earlier reply. The said reply has been annexed to the affidavit. It was further stated that, the prosecution has

been opposing the relief sought in this petition on frivolous ground.

7. The respondent No.2 filed affidavit dated 19<sup>th</sup> February 2024 stating that, the subject goods belong to M/s. SKM Constra and they had assigned the work of transporting subject goods to respondent No.2 from Kalamboli to Andheri. He has obtained letter dated 30<sup>th</sup> January 2024 from M/s. SKM Constra, who has confirmed the fact that the subject goods belong to them and they had assigned the work for transporting the said goods to respondent No.2 and they have no grievance any nature against him.

8. The respondent No.2 had preferred an application before the Court of learned Magistrate for Return of Property viz. goods loaded on his truck/trailer. Vide order dated 6<sup>th</sup> November 2023, the application for Return of Property was allowed. The interim custody of the truck and 32 tonnes of TMT Bar was given to respondent No.2 till conclusion of trial on executing indemnity bond of Rs.25,000/- before the Investigating Officer. The Investigating officer was directed to take the receipt of handling over the possession of the muddemal from the respondent No.2.

9. The Assistant Police Inspector attached to Sewree Police Station filed affidavit in reply dated 15<sup>th</sup> April 2024 it was contended that, during the investigation it was revealed that, there are two companies, one is SKM

Constra and other company SKAF. SKM sold the goods to SKAF. The goods were loaded from Kalamboli and were supposed to be delivered at Andheri site where the constructions of the SKAF is going on. The complainant is owner of the Motor Truck bearing No.MH-46-AR-7156. He is merely the carrier of goods. The learned Magistrate without ascertaining the ownership allowed the application for Return of Property. The statement of Vijendra Chaurasiya, Logistic Head of SKM Constra was recorded. It is necessary to conduct investigation regarding ownership.

10. It is pertinent to note that, sufficient opportunity was given to the Investigating Agency to investigate the crime. The FIR has been registered on 2<sup>nd</sup> November 2023. The petition was listed and adjourned on several occasions. Initially, the Investigating Agency contended that, the goods belong to Metro Authority. The said contention nowhere reflected thereafter, in the reply to anticipatory bail application. In reply to application for anticipatory bail, it was not the case of the Investigating Agency that the goods belongs to Metro Authority. Subsequently, it is contended that, the goods were to be delivered to SKAF at Andheri and the said goods were sold to them. It was contended that, SKM Constra sold the goods to SKAF. During investigation, the statement of Vijendra Chaurasiya was recorded on 13<sup>th</sup> February 2024 which itself indicate that, he is logistic head with SKM Company. The company is distributor of Tata Steel. The

contract was received by company from SKF. Steel material was to be delivered to Andheri. Respondent No.2 was engaged for transporting goods. The goods were loaded on 31<sup>st</sup> October 2023. Since the goods were not delivered, he contacted respondent No.2. Subsequently, respondent No.2 informed that the accused was involved in delivering goods and FIR has been registered. Thereafter, within one week, the respondent No.2 has delivered the entire material on site at Andheri. The said fact was confirmed from the site Manager Abhishek Mishra that the goods were delivered at Andheri. On 30<sup>th</sup> January 2024 certificate has been issued for compliance of delivering of good by respondent No.2.

11. Thus, as per the statement of witness recorded by police, the goods had reached to its destination. The delivery has been effected. It is pertinent to note that, learned Magistrate had passed an order of Return of Property on 6<sup>th</sup> November 2023. The statement of Vijendra Chaurasiya indicate that the goods were delivered apparently after the said order. The complainant has no objection for quashing the FIR. The factual aspects as stated above, FIR can be quashed.

### **ORDER**

- (i) Criminal Writ Petition No. 3831 of 2023 is allowed;
- (ii) The impugned FIR dated 2<sup>nd</sup> November 2023 registered with Sewree Police Station, Mumbai vide C.R. No.211 of 2023 is quashed and set aside

against the petitioner.

(iii) The petitioner shall pay costs of Rs.20,000/- to Advocates Association of Western India Generation Next within a period of three weeks and submit the receipt of the same in the Registry of this Court. The details of the bank account for payment of costs are as under :

|                |                                                             |
|----------------|-------------------------------------------------------------|
| Account Name   | : Advocates Association of<br>Western India Generation Next |
| Account Number | : 000110110007807                                           |
| Bank Name      | : Bank of India                                             |
| Branch Name    | : Mumbai Main                                               |
| IFSC Code      | : BKID0000001                                               |

(iv) Writ Petition stands disposed off.

**(N. R. BORKAR, J.)**

**(PRAKASH D. NAIK, J.)**