

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

*INTERIM APPLICATION NO.517 OF 2024
IN
CRIMINAL WRIT PETITION NO,4457 OF 2016*

Madhukar Bayaji Thaval ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Sushrut Jadhwar for the Applicant

Mr. V. B. Konde-Deshmukh, Addl.P.P for the Respondent No.1-State.

Mr. Shashikant P. Chaudhari a/w Ms. Snehal Chaudhari i/b
Maharashtra Law Associates, for the Respondent No.2.

*CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
DATE : 28th JANUARY 2025*

P.C. :

1. Heard learned counsel for the parties.
2. By this interim application filed in the aforesaid disposed of petition, the applicant seeks the following reliefs:-

“ a) *The court may record the finding that it is expedient in the interest of the case of perjury made against the Respondent No.2;*

b) *That this perjury complaint may be sent to the concerned Magistrate having jurisdiction.”*

3. Learned counsel for the applicant submits that the respondent No.2 had made false allegations against the applicant in his complaint made to the Director General of Police, Anti Corruption Bureau (ACB), Worli, Mumbai, and, the same is evident from the fact, that the enquiry was subsequently closed by the ACB, warrants a direction by this Court to register a forgery complaint, against the respondent No.2. He states that apart from the aforesaid, the respondent No.2 herein, had also made incorrect and false allegations in the writ petition filed by him, as against the applicant, in particular in paras 2 to 5 of the aforesaid petition, which petition was dismissed by this Court vide order dated 23rd March 2017. He submits that the respondent No.2 had filed the aforesaid writ petition and adopted the contents of his written complaint dated 1st November 2012 in the memo of the said writ petition, knowing the same to be false.

4. Learned counsel for the respondent No.2 as well as the learned Additional Public Prosecutor oppose the interim application. They submit that no ground is made out for granting the reliefs as sought for, by the applicant.

5. Perused the papers. At the outset, we may note certain unwarranted averments made in the aforesaid application, by the applicant, in particular allegations on page 20 para 20. We do not wish to reproduce the said paragraph, considering what is stated in the said paragraph. When the learned counsel for the petitioner was confronted with the said paragraph, he tendered his apology for setting out what is stated in para 20.

6. A few facts as are germane for deciding the aforesaid interim application are set out hereinunder :- -

It appears that the respondent No.2 had filed complaints against the applicant to the Director General of Police, ACB, Worli Mumbai on 1st November 2012; 28th November 2012; 21st

December 2012; 26th April 2013; 6th June 2013; 15th May 2014; 21st November 2014 and 22nd July 2015. The respondent No.2 had made certain allegations against the applicant vis-a-vis disproportionate assets and for taking action against the applicant. Since the ACB did not take any steps on the basis of the respondent No.2's complaints, it appears that the respondent No.2 filed the aforesaid writ petition, in this Court. The reliefs sought in the said writ petition was a direction to the respondent No.1 therein i.e. The Director General of Police, ACB or any other independent investigation agency to decide the respondent No.2's complaint (petitioner therein) dated 1st November 2012 and take appropriate action against the applicant i.e. respondent No.2 in the original writ petition. It appears that this Court vide order dated 23rd March 2017 dismissed the said writ petition. The said order reads thus:-

“1] Heard Mr. R. P. Pawar, learned counsel for the petitioner and Mr. J. P. Yagnik, learned APP for the State.

2] By this petition, petitioner is seeking direction to respondent No.1 to decide the petitioner's complaint dated 1st November, 2012 filed against respondent No.2.

3] We have perused the complaint which is annexed as Annexure “A” to this petition.

3A] The main grievance of the petitioner is that the property of the petitioner was purchased by respondent No.2. However, total consideration is not given and in the said transaction, petitioner was cheated to the tune of Rs.30 lacs. In our opinion, this dispute is of civil nature and therefore, police have rightly refused to register F.I.R.

4] The petitioner has also alleged about the disproportionate assets of respondent No.2. On the basis of these allegations, the petitioner is praying that the offence under the provisions of Prevention of Corruption Act, be directed to be registered against respondent No.2.

5] The learned APP submits that an open enquiry against respondent No.2, is already concluded by Anti Corruption Bureau.

6] In such situation, at the instance of petitioner, who has grudge against respondent No.2, we are not inclined to entertain this petition. The petition is therefore, dismissed.”

It appears that thereafter the ACB vide letter dated 21st March 2018 addressed a letter to the applicant stating therein, that after conducting an open enquiry, since no merit was found, the enquiry was closed. Pursuant thereto, the applicant filed an application being Interim Application (Stamp) No.18752 of 2023 in Writ Petition No.1204 of 2023 on 6th October 2023 before the learned Single Judge, seeking the same prayer as sought for in this petition. The said application was withdrawn unconditionally vide order dated 2nd November 2023. The said order reads thus:-

“1. Learned counsel appearing for the Applicant Madhukar Thaval prays for unconditional withdrawal of this Interim Application (Stamp) No.18752/2023 in Criminal Writ Petition No.1204/2023.

2. Therefore, Interim Application (Stamp) No.18752/2023 is permitted to be withdrawn unconditionally and is disposed of as such.”

7. It thus appears that no liberty was granted whilst withdrawing the said interim application for filing a fresh application before the Division Bench. The relief sought in interim application (Stamp) No.18752 of 2023, we are informed was identical to that sought in the aforesaid interim application. Once having withdrawn the earlier interim application unconditionally, we do not see how the present interim application can be filed by the applicant in the aforesaid writ petition, more particularly, when no liberty was granted to the applicant.

8. In the light of aforesaid, considering the unconditional withdrawal of the earlier interim application, the question of entertaining the present interim application does not arise, once the applicant had withdrawn his application, seeking identical relief,

unconditionally, before the learned Single Judge.

9. Interim Application is accordingly dismissed and as such disposed of.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.