IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2088 OF 2021
WITH
INTERIM APPLICATION NO. 3905 OF 2025

Kishore Ramji Tank
Age : 50 years, Occ.:- Business
residing at Pabla Bhaji Pala Wadi,
Sion-Panvel Road, Mankhurd,
Opp. Mankhurd Traffic Police
Chowki, Mankhurd, Mumbai 400 088 … Petitioner

V/s.

1. The State of Maharashtra
(at the instance of Govandi
Police Station, in C.r. NO. 136/21)

2. Swapnil Prabhakar Ghate
Age 32 years, Occ.:- Service
residing at Saraswat Colony,
Indraprastha Bldg., Dombivali (E)
Thane … Respondents

Mr. Akhilesh Singh a/w Mr. Manish Dubey for Petitioner.
Mr. Amit A. Palkar, A.P.P. for Respondent-State.

CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.
DATE : 24th November 2025

JUDGMENT : (Per : A.S. Gadkari, J.) :-

1) By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking quashing of C.C. No. 1944/PS/24, pending on the file of learned Judicial Magistrate First Class, 61st Court, Kurla, Mumbai, arising out of C.R. No. 136 of 2021, dated 11th May 2021, registered with Govandi Police Station, Mumbai, punishable under Sections, 341, 427, 434, 447, 504, 506 and 188 of the Indian Penal Code, Section 52 of the Disaster Management Act, 2005 and Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897.

2) Heard Mr. Singh, learned Advocate for the Petitioner and Mr. Palkar, learned APP for Respondent, State. Perused record.

3) The First Information Report is lodged by Shri Swapnil Ghate, the Principal of Industrial Training Institute(ITI), Mankhurd, Mumbai. It is the prosecution case that, the land beneath the said Institute and the adjoining land of the Children's Aid Society, belongs to Government of Maharashtra. The Children's Aid Society is being managed by the ITI, Mankhurd. The juveniles in conflict with the law are lodged under observation in the said Children's Aid Society. On 8th May 2021 at about 8.30 p.m., the security guard of ITI namely Mr. Rajendra Chavan was on duty. While patrolling, he saw that, the Petitioner along with 20 to 25 other persons had demolished the security wall of the said institution and was planting trees and kept two water tanks. When the Petitioner was confronted

with by the security guards, he asked them to call the Government Officer and asked them to vacate the premises. The security guards thereafter contacted on 100 phone number. Subsequently, a police van came at the said spot and stopped the encroachment by the Petitioner and asked the Petitioner to accompany them to the Govandi Police Station. In this brief premise, present crime is registered by the informant i.e. the Principal of the said ITI.

4) Mr. Singh, learned Advocate appearing for the Petitioner submitted that, in the Final Report, the Investigating Officer has said that, the place where the alleged encroachment and demolition committed by the Petitioner, does not belong to the said Institute and it is out of City Survey No. 121. He submitted that, there is a civil dispute *inter se* between the parties and it is the outcome that, the present crime is registered by the said Government Institution. We do not find substance in the said submission. The Investigating Officer in his final report itself has stated that, after the lease period/ licence period was over, the Institute had given notice to the father of Petitioner and the Petitioner, to vacate the premises. However they did not do it.

4.1) Perusal of record indicates that, the police attached to Govandi police station have conducted Spot Panchnama on 12th May 2025, between 10.00 a.m. to 10.30 a.m.. Perusal of the Spot Panchnama clearly indicates that, it duly corroborates the version of the first informant regarding

demolition of the wall of the said Institute, planting of trees and keeping of two plastic water tanks at the said place.

4.2) Be that as it may, it is by now the well settled position of law that, the defence of accused cannot be tested in a Petition under Article 226 of the Constitution of India.

5) The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh And Others, reported in (2023) 18 SCC 399,* has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of the Cr.P.C., and consider the applications as if those are against the Judgment and Orders of the trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of the Cr.P.C., the Court is not required to conduct a mini trial.

5.1) The Hon'ble Supreme Court in the case of *Iqbal alias Bala and Ors. Vs. State of Uttar Pradesh and Ors., reported in (2023) 8 SCC 734,* in para No.7, has held that, although the allegations levelled in the F.I.R. do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet the Hon'ble Supreme Court was of the view that, the Appellants therein should prefer discharge application before the trial Court under Section 227 of the Criminal Procedure Code (Cr.P.C.), as the investigation was over and chargesheet was ready to be filed before the

competent Court. That, in such circumstances, the trial Court should be allowed to look into the materials which the Investigating Officer might have collected forming part of the chargesheet.

5.2) The Hon'ble Supreme Court in the case of *Priyanka Jaiswal v. State of Jharkhand and Others, reported in 2024 SCC OnLIine SC 685*, while dealing with the similar issue, has held as follows:

> *"13. … … This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside….."*

6) Perusal of record clearly indicates that, there is sufficient material available on record to corroborate the version of the first informant. According to us, there is sufficient material available in the form of statements of witnesses even to frame charge against the Petitioner, if the prosecution is serious enough in proceeding against the Petitioner in the said crime.

7) In view of the above, we find no merits in the Petition and is accordingly dismissed.

8) In view of disposal of Petition, Interim Application No. 3905 of 2025, filed therein does not survive and is accordingly disposed off.

(RANJITSINHA RAJA BHONSALE, J.) (A.S. GADKARI, J.)