



sh Chavan/Supriya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 05 OF 2021

Akhil Anil Chitre

Age : 36 years, Occupation : Business,

Residing At : Samadhan 45/1, MHB Colony,

Bandra East, Mumbai 400 051.

... Petitioner

V/s.

1. The State of Maharashtra
(Through Dindoshi Police Station,
being FIR No.884/2020).

2. Durgesh Ramchandra Gupta
Age : 35 years, Occupation : Advocate,
Residing At : Plot No.1, Krushna Park,
A Building, Jaisal Park Road, Bhainder East,
District Thane.

... Respondents

Mr. Tapan Thattet, for the Petitioner.

Smt. M. M. Deshmukh, Acting PP for State with Mr. Vinod Chate, APP for
the Respondent- State.

Mr. Kumar Soutade, PSI, Dindoshi Police Station.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 3rd OCTOBER 2025

PRONOUNCED ON : 9th DECEMBER 2025

JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

1) The Petitioner, by the present Petition under Article 226 of the
Constitution of India has approached this Court with a prayer that, the FIR
bearing No.884/2020 dated 4th December, 2020 filed under sections 341, 323,

504, 506 and 34 of the Indian Penal Code, registered with Dindoshi Police Station, be quashed and set aside.

2) This Court vide its order dated 8th February, 2021 was pleased to issue notice to Respondent. Respondent No.2, though served has not appeared.

3) Heard Mr. Tapan Thattet, learned Advocate for the Petitioner and Smt. M. M. Deshmukh, Acting PP with Mr. Vinod Chate, learned APP for the Respondent – State. Perused record.

4) The Petitioner seeks quashing of FIR registered with Dindoshi Police Station, being C.R. No.884/2020 dated 4th December, 2020, under section 341, 323, 504, 506 and 34 of the Indian Penal Code. Perusal of the FIR indicates that, the same has been filed by Respondent No.2, who also happens to be an Advocate. Perusal of the FIR reveals that, in October, 2020, followers of the Maharashtra Navnirman Sena (party) were insisting that, the company Amazon Transportation Pvt. Ltd. should use Marathi language in their day to day activities. That, the Petitioner as an follower of the said party had threatened the said company/its employees. Pursuant to the said threats, the said Company had filed legal proceedings in the City Civil Court at Dindoshi, being Civil Suit No.1119/2020 seeking injunction to restrain the Petitioner and the other followers of party to enter into the Company premises. On behalf of the Company, the said suit was filed by Advocate Sushant Joshi and Advocate Akshay Purkar. That, the City Civil Court at

Dindoshi vide order dated 22nd October, 2020 had granted an ex-parte stay and the suit was listed for hearing on 4th December, 2020. That, as Advocate Mr. Sushant Joshi was unwell, Advocate Durgesh R. Gupta i.e. the Respondent No.2/complainant attended the Court proceeding. That, after finishing the Court proceeding at around 1.30 pm, when the Respondent No.2/complainant was leaving the Court premises, unknown person came near him and asked him his name and whether he was responsible for taking the Order of stay. At that time two other persons came from behind and started assaulting the complainant. That, the said unknown person on seeing that other Advocates assembling at spot, ran away from the said spot. Other lawyers who had assembled at the spot chased them, but could not catch hold of the said unknown persons. The complainant spotted the Petitioner removing his car and when the other lawyers were making inquiry with the Petitioner, one of the unknown person was found there. That, as the Civil Suit was filed and an ex-parte stay order was obtained, the Petitioner along with three unknown persons pursuant to and with a common intention stopped the complainant and assaulted him with kick and fist blows and abused him. In the background of these facts, the FIR was filed.

5) Learned Advocate for the Petitioner contended that, there is no role assigned to the Petitioner in the FIR. That, no cognizable offence is made out and that the Petitioner has not participated in the alleged assault. That, the statement recorded during the investigation cannot be read into the FIR.

That, subsequent statements cannot be a ground to invoke a cognizable offence, when none has been made out in the FIR. That, the FIR fails to bring out any cognizable offence whatsoever against the Petitioner. In view thereof, the Petitioner submits that, the present FIR be quashed and set aside.

6) Mr. Vinod Chate learned APP for the State submits that, a clear case has been made out against the Petitioner. That, the investigation has been completed, the statement of witnesses have been recorded. During the investigation, the Petitioner has been identified and there is CCTV recording available on record. That, there are various other offences registered against the Petitioner at Bandra, Kherwadi, Nirmal Nagar, Vakola, N. M. Joshi Marg and Dindoshi Police Stations. That, the Petitioner is a history-sheeter. That, there is CCTV footage, which shows that, the Petitioner is trying to flee from the spot of incident in his car. That, statements of the Advocates present at/near the spot of the incident have been recorded, which clearly indicate that, the Petitioner was present at the spot and trying to run away when he was apprehended by the lawyers. That, the Complainant/Respondent No.2 has sustained injuries in the assault. That, the investigation of crime is over and the chargesheet is ready to be filed.

7) After being informed by the Learned APP that, the investigation has been completed and the chargesheet is ready to be filed, we pointed out the said fact to the learned Advocate appearing for the Petitioner. In addition to the aforesaid factual position, we have also pointed out the law as laid

down by the Supreme Court in the cases of *Iqbal alias Bala V/s. State of U. P in Criminal reported in (2023) 20 SCC 209*, and requested the Advocate for the Petitioner, to consider the legal position as to whether it would be beneficial for the Petitioner, if he prefers a discharge application before the Trial Court. The Learned Advocate for the Petitioner was also requested to consider the decisions of the Supreme Court in the cases of *Central Bureau of Investigation V/s. Aryan Singh, reported in (2023) 18 SCC 399* and *Manik B. V/s. Kadapala Sreyes Reddy & Anr., reported in (2023) Live Law SC 642*. Learned Advocate appearing for the Petitioner, after being informed said legal position, submitted that, the said judgments are not applicable to his case and insisted on proceeding of hearing of the matter on merit.

8) The gravamen of the allegations/charges against the Petitioner is that, the Petitioner along with other unknown persons with a common intention obstructed the complainant and assaulted him. The Complainant/Respondent No.2, an Advocate was accosted and assaulted, as he had appeared in the civil proceedings filed for and on behalf of Amazon Transportation Pvt. Ltd, where an ex-parte stay was granted against the followers/activists of the Maharashtra Navnirman Sena. The offence has been registered under Sections 341, 323, 504, 506 read with Section 34 of the Indian Penal Code. Considering the FIR, the papers of investigation, statements and the injury certificate, it cannot be said that, no case at all is made out against the accused. We, in fact find that, a prima facie case is

clearly made out against the accused including the Petitioner. There is material on record, which prima facie implicates the Petitioner in the said offence. It is settled law that, in a proceeding under Section 482 of the Criminal Procedure Code, this Court is not required to conduct a mini trial or get into nitty-gritties of the evidence. Further, in the present case, investigation is over and the chargesheet is ready to be filed.

9) We have noted that observations of the Supreme Court in paragraphs 6 and 7 in the case of *Iqbal alias Bala V/s. State of U. P. reported in (2023) 8 SCC 734* which read as under:

“6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should quash the FIR?

7. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the Trial Court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge sheet is ready to be filed before the competent court. In such circumstances, the Trial Court should be allowed to look into the materials which the investigation officer might have collected forming part of the charge sheet. If any such

discharge application is filed, the Trial Court shall look into the materials and take a call whether any case for discharge is made out or not.”

10) In our opinion, the said observations are squarely applicable to the present case. The investigation clearly shows the participation of the Petitioner in the present crime. The manner in which assault has taken place etc, is a matter of trial. We cannot, and ought not to under the jurisdiction of Section 482 of Criminal Procedure Code, enter into that arena. According to us, this is not a case, which calls for exercise of jurisdiction under section 482 of the Criminal Procedure Code. According to us, no case for quashing is made out. What the Petitioner raises before us is his defence, which can only be tested or tried at the trial. The FIR, makes out a prima facie case. The defences raised by the Petitioner are all required to be raised in evidence at the trial.

11) We may also make a useful reference to the Judgment of the Supreme Court in the case of *Central Bureau of Investigation V/s. Aryan Singh*, reported in (2023) 18 SCC 399, wherein, the Supreme Court has categorically held that, while considering an application for quashing under Section 482 of Criminal Procedure Code, the High Court cannot conduct mini trial. Further, in the case of *Manik B. V/s. Kadapala Sreyes Reddy & Anr.*, reported in (2023) Live Law SC 642, the Hon'ble Supreme Court has held that, the Court would exercise its power of quash a proceeding only if it finds

that taking the case at its face value, no case is made out. The Supreme Court has observed that, it is not permissible for Court to go into the correctness or otherwise of the material placed by the prosecution in a chargesheet. The argument and submissions advanced by the Petitioner across the bar, amount to entering into the arena of evidence and trial, which in our opinion is not permitted. We have already noted that, the investigation of the crime is already completed and chargesheet is ready to be filed.

12) This Court has in a recent decision, in the case of *Hemendra Pranjivan Bosmiya V/s. The State of Maharashtra & Anr in Criminal Application No.277 of 2023*, observed that;

“5. In the case of Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987), the Apex Court 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 Cr.PC., as if it is a mini trial and consider the application as if those are against the Judgment and Orders of the Trial Court on conclusion of trial.

5.1. In the case of Manik B vs. Kadapala Sreyes Reddy, the Apex Court has held that, the scope of interference while quashing the proceedings under Section 482 of Cr.PC. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. That, it is not permissible for the Court to go into correctness or otherwise of the material placed by the prosecution in the chargesheet.

5.2. In the case of Iqbal @ Bala and Ors. vs. State of U.P. and

Ors., (2023 SCC Online SC 949), the Apex Court declined to interfere in the order of the High Court rejecting the petition filed for quashing of the FIR, taking note of the fact that, the investigation had been completed and chargesheet is required to be filed. The view taken by the Apex Court is that the Trial Court should be allowed to look into materials which the investigation officer might have collected forming part of the chargesheet, despite the observation of the Apex Court that the allegation leveled in the FIR do not inspire any confidence.”

13) In view of the aforesaid facts and law as laid down by the Supreme Court, we are of the opinion that, it would only be appropriate to relegate the Petitioner to avail alternate remedy of filing a discharge application before a Trial Court. We also note that, it is not a case that, by refusing to entertain a petition under section 482 of the Code of Criminal Procedure, the Petitioner is left with no remedy. It is a settled position of law that, the High Court would not entertain a Petitioner under Article 226 of the Constitution of India, where Petitioner has alternative remedy, which without being unduly onerous provides an equally efficacious remedy. It is a well settled law and a recognized principle that, a party should avail for himself such remedies, which are available under the law, before he resorts a constitutional remedy. The purpose and object of a Petition under Section 482 of Criminal Procedure Code is to prevent the abuse of process of law and to secure the ends of justice. The same does not mean that, the remedy available

or provided under law ought to be brushed aside and this Court be directly approached under Section 482 of Criminal Procedure Code. As noted earlier, the Hon'ble Supreme Court in a case of Iqbal alias Bala V/s. State of U. P. (supra), in paragraph No.8 has held that, although the allegations lev elled in the FIR do not inspire any confidence, more particularly in absence of any specific date, time and etc., the Hon'ble Supreme Court was of the view that, the Appellants therein should prefer a discharge application before the Trial Court under Section 227 of the of the Criminal Procedure Code as the investigation is over and chargesheet is ready to be filed before the competent Court. The Hon'ble Supreme Court, is of the view that, in such circumstances, the Trial Court should be the Court, which should be allowed to look into the materials, which the Investigation officer might have collected forming part of the chargesheet.

14) In view of the aforesaid facts and circumstances and after considering the law as enunciated by the Supreme Court, we are of the opinion that the Petitioner has not made out any case for exercising the powers under section 482 of the Criminal Procedure Code.

15) In view thereof, the petition is dismissed.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)

16) At this stage, learned Advocate for the Petitioner submitted that, the interim relief which is running in favour of the Petitioner since the year 2021 may be extended for a period of four weeks, to enable him to test the correctness of this Judgment before the Hon'ble Supreme Court.

16.1) Taking into consideration the reasoning given in the Judgment; the fact that the Petition is pending for last four years and the need of completion of investigation, we are not inclined to extend the interim relief. The said request is accordingly rejected.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)