

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

CRIMINAL WRIT PETITION NO. 3062 OF 2022

`AK' ..Petitioner
Versus
1. The State of Maharashtra
2. The Assistant Commissioner of Police
3. Simrant Jasvindarsingh Sachdeva ...Respondents

Mr. Shravan Giri for the Petitioner

Mr. J. P. Yagnik, A.P.P for the Respondent Nos.1 & 2-State

Mr.Viresh Purwant for the Respondent No. 3

*CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.
THURSDAY, 20th OCTOBER 2022*

P.C :

1 The name of the petitioner is being masked with `AK`, since the petition pertains to her son, who is a juvenile. Registry is directed to delete the name of the petitioner from the record/website.

2 At the outset, learned counsel for the petitioner seeks leave to amend to remove the photograph annexed at Exhibit `B` at

page 20 of the petition. Leave granted. Amendment to be carried out forthwith.

3 Heard learned counsel for the parties.

4 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent Nos.1 and 2. Mr. Purwant waives notice on behalf of the respondent No.3.

5 By this petition, the petitioner, mother of a 9 year old minor boy, seeks quashing of the FIR, registered vide C.R. No. 219/2022 with the Vanrai Police Station, Mumbai, as against her son, at the behest of the respondent No.3, for the alleged offence punishable under Section 338 of the Indian Penal Code and consequently, the proceeding pending before the learned Metropolitan Magistrate, 21st Court, Dongri, being Misc. Application No. 8/2022.

6 Learned counsel for the petitioner submits that having regard to the age of the petitioner's son i.e. 9 years, no FIR could have been registered by the police, keeping in mind the mandate of Section 83 of the Indian Penal Code. He submits that post the FIR, by the media coverage given to the said incident, which was clearly an accident, the minor boy has been traumatized and has been badly affected. He submits that the incident was clearly an accident, as is evident from the facts and as such, no action ought to have been initiated by the police on the basis of the complaint lodged by the respondent No. 3.

7 Learned A.P.P submits that the prosecution has no objection to the quashing of the FIR. He submits that infact, the police have filed a `C' Summary report in the said case and action has been initiated against the Assistant Commissioner of Police, who registered the FIR as against the petitioner's son.

8 Learned counsel for the respondent No.3, orally submits that the respondent No.3 also has no objection to the quashing of the FIR/proceeding.

9 Perused the papers. According to the respondent No.3/original complainant, the incident took place on 27.03.2022 at 7:30 p.m., when her parents had gone down to a podium of the society building. It is alleged by the respondent No. 3 that the petitioner's minor son aged 9 years, lost his balance while cycling and dashed against her mother, as a result of which, she sustained an injury. Pursuant thereto, respondent No. 3 approached the Vanrai Police Station, Mumbai, and lodged a complaint, which was registered vide C.R. No. 219/2022 with the said police station. The said FIR was lodged on 05.04.2022, after about one week of the incident.

10 The facts clearly reveal that it was nothing but an accident, which was clearly unintentional. The boy was only aged 9

years. We are shocked and surprised that the police registered the FIR against a minor boy, at the behest of the respondent No.3, without having regard to the age of the boy involved. It appears that even before investigation, `C' Summary report was filed by the police in the said case, however, much damage was done to the boy aged 9 years, by the allegations made against him and the publicity given to the said case.

11 In para 4 of the affidavit of Shri Tanaji Santu Patil, Police Sub-Inspector attached to the Vanrai Police Station, Mumbai, he has stated that the said FIR was registered due to misconception of law and that it was not his intent to register an FIR against a minor child aged 9 years. He has further stated that he has prepared the report under Section 2(45) of the Juvenile Act, but had not taken any coercive action at any point of time. He has further tendered his unconditional apology for registering the FIR against the minor child.

12 Further, in para 6, he has stated that having regard to the provisions of Section 83 of the Indian Penal Code, a 'C' Summary report was put up before the Senior Officer for approval, and the same was approved by the DCP, Zone-XII on 16.05.2022. He has further stated that after verifying the papers and the report, the DCP suggested action against the then ACP i.e. the respondent No. 2 and that the same is pending before the Superior Officers.

13 We are informed that the said 'C' Summary report was submitted to the Juvenile Court on 20.05.2022, however, no orders have been passed by the Juvenile Court, till date. We may observe here, that despite us directing the Juvenile Court to take up the said report and to pass appropriate orders, the Juvenile Court has not passed any orders and hence, we have proceeded to hear the aforesaid petition.

14 Further, in para 8, the concerned PSI has stated that he has no objection to the quashing of the aforesaid FIR and that he is tendering his unconditional apology for the act i.e. of registration of the FIR at the behest of the respondent No.3.

15 Misconception or ignorance of law is not an excuse, much less, for a police officer and in the peculiar facts, more so, having regard to the fact that the child was only 9 years of age. This action of the police i.e. of registration of FIR, has resulted in traumatizing a 9 year old boy. Despite Section 83 of the Indian Penal Code, the police have proceeded to register the FIR as against the petitioner's son, a minor aged 9 years, at the behest of the respondent No.3. The action reflects complete non-application of mind by the concerned officer whilst registering the offence.

16 Considering what is stated aforesaid, we deem it appropriate to allow the petition. Accordingly, the petition is allowed.

17 The FIR bearing C.R. No. 219/2022 registered with the Vanrai Police Station, Mumbai, as against the petitioner's son and consequently, the proceeding pending before the learned Metropolitan Magistrate, 21st Court, Dongri, being Misc. Application No. 8/2022, are quashed and set-aside.

18 We express our displeasure at the conduct of the learned Metropolitan Magistrate, in not taking up the matter, despite the orders passed by this Court. At the same time, having regard to the conduct of the police, in the facts, we deem it appropriate to direct the State Government to pay cost of Rs. 25,000/- to the petitioner, within eight weeks from today. The State Government to recover the said cost from the concerned officers, responsible for the said lapse.

19 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

20 Since we are informed that departmental inquiry was conducted as against the ACP, we direct the learned A.P.P to place the report of the said inquiry/action taken, against the respondent No.2/concerned officer, before this Court.

21 List on **20.12.2022** under the caption `for directions`.

22 All concerned to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.