

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

CRIMINAL WRIT PETITION NO.3894 OF 2022

Zishan Mukhtar Hussain Siddique
Age: 33 yrs, Occ. Furniture Showroom,
r/o: Room no. 904, B-Wing,
Poonam Shruti CHS Ltd., Latif Park,
S. K. Stone Road, Mira Road (E),
Thane – 401107.

...Petitioner

Versus

The State of Maharashtra
(Through Mira Road Police Station)

...Respondent

Mr. Anees Shaikh, for the Petitioner.

Mr. J. P. Yagnik, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.***

DATE : 28th NOVEMBER 2022

ORDER (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties.
2. 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 –State.

3. By this petition, preferred under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"), the petitioner seeks quashing of the FIR bearing C.R. No. 168 of 2022 registered with the Mira Road Police Station, for the alleged offence punishable under Section 3 of the Official Secrets Act, 1923 and consequently the charge-sheet filed in the Court of the learned Chief Judicial Magistrate, Thane, being No. RCC 1811 of 2022.

4. The prosecution case in brief, is as under :-

According to the respondent – State, the incident took place on 20th April 2022 at about 17:30 hrs at Mira Road Police Station, when the petitioner was called to the said police station for enquiry vis-a-vis the complaint (written representation) made against the petitioner i.e. in connection with Application bearing No.245 of 2022. The said application was being enquired into by API – Vijay Chavan of the Mira Road Police Station. During enquiry by API – Vijay Chavan, the petitioner sought a copy of the said application filed

against him. On demand, the petitioner was given a copy of the said application to read, however, when the petitioner sought permission to provide for a photocopy of the said application or permission to take a photo of the said application on his mobile, the said request was declined. As the concerned officer not only declined the request of the petitioner to take a photo of the said application but also refused to provide a copy of the said application, the petitioner is stated to have taken a photo and video of the said application filed against him. When the concerned officer checked the mobile phone of the petitioner, a copy of the said application and videos were found on the mobile and hence Section 3 of the Official Secrets Act was invoked against the petitioner. After investigation, charge-sheet was filed in the Court of the learned Chief Judicial Magistrate, Thane, being No. RCC 1811 of 2022.

5. Learned counsel for the petitioner submits that the petitioner is a complainant in RCC No.755 of 2022, filed against Irfan Burthan Shaikh and another. He submits that on 18th April 2022, the

petitioner received a call from constable Sanjay Utekar of Kanakiya Police Station, who threatened him to attend the police station (without serving summons). He submits that pursuant thereto, the petitioner attended the police station on 20th April 2022 and found the accused in the said case sitting in the cabin of API – Vijay Chavan; and that API Vijay Chavan on seeing the petitioner started abusing him in filthy language. Learned counsel submitted that infact, the accused - Irfan Shaikh told the petitioner that he had bribed the officials and if he did not settle the matter, an FIR would be lodged against him. According to the learned counsel for the petitioner, on 20th April 2022 at around 6:00 p.m. the petitioner was again called to the police station and was asked to click photos of some documents to show his advocate and hence after seeking permission, when the photographs were taken, suddenly a constable started abusing him and booked him under Section 3 of the Official Secrets Act. Learned counsel for the petitioner submits that the petitioner was forced to sign some documents and some blank papers and after registration of the offence was released. Learned counsel for the petitioner submits that taking

the prosecution case as it stands, no offence as alleged is disclosed against the petitioner. Learned Counsel for the petitioner, in support of his submission relied on judgment passed by the Nagpur Bench of this Court, in the case of *Ravindra Shitalrao Upadyay Vs. State of Maharashtra, Through P.S.O. Sawangi (Meghe)*¹. He submits that since the petitioner's case squarely fall within the parameters of the Apex Court's decision in the case of *State of Haryana and Others Vs. Bhajan Lal and Others*², the FIR/proceeding against the petitioner, be quashed and set aside.

6. Learned A.P.P does not dispute the legal position, that 'Police Station' is not covered under the provisions of the Official Secrets Act.

7. Perused the papers. The allegation as against the petitioner is that he took photograph of a complaint application and videos of the same. Pursuant thereto, an offence was registered, against the

¹ Criminal Application (APL) No.615 of 2021 dated 26.07.2022

² 1992 Supp (1) Supreme Court Cases 335

petitioner, alleging Section 3 of the Official Secrets Act. After investigation, charge-sheet has been filed in the said case against the petitioner.

8. Section 3 of the Official Secrets Act reads thus;

“3. Penalties for spying. – (1) If any person for any purpose prejudicial to the safety or interests of the State –

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in

relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.”

9. Section 3 of the Official Secrets Act, provides punishment for acts, prejudicial to the safety or interests of the State; acts done affecting the sovereignty and integrity of India and so on i.e, for the acts stipulated therein. *Prima facie*, the Official Secrets Act appears to have been malafidely invoked by the concerned Police. By no stretch of imagination, section 3 could have been invoked in the facts of the present case. It is pertinent to note that the definition of 'prohibited place' as defined in section 2(8) of the Official Secrets Act, is an exhaustive definition, which does not specifically include 'Police Station' as one of the places or establishments.

10. We come across several such cases, where the police invoke Section 3 of the Official Secrets Act, without application of mind. Infact, this Court in the case of *Ravindra Shitalrao Upadyay (supra)* has

held that even video recording made on the mobile phone within the Police Station whilst discussions are carried out would not attract ingredients of Section 3 of the Official Secrets Act.

11. The invocation of Section 3 of the Official Secrets Act, in the facts, *prima-facie* appears to have been malafidely invoked. By no stretch of imagination, can the act of taking photos/video, as stated aforesaid, be said to be an act constituting an offence of 'spying'. The word 'spying' has serious connotations and the police have to be mindful of the same. Invocation of the Official Secrets Act has serious repercussions on a person's life, reputation and career. It cannot and must not be lightly invoked. *Prima-facie*, it appears to us that the petitioner was slapped with the Official Secrets Act, malafidely and deliberately, when on the face of it, no such offence was made out as against the petitioner. Law cannot be used as an instrument to oppress and harrass people. Police being the custodians of law are duty bound to uphold it and not misuse it. 'Police Station' do not come within the definition of 'prohibited place', as defined in the Official Secrets Act.

Police Stations are places, where people are free to go/walk in, to lodge a complaint/FIR, to redress the wrong/injustice done to them. It is always open for the police to put up a board prohibiting photography but if one does take a photo/video, certainly, the said act would not come within the ambit of the Official Secrets Act.

12. The Apex Court in the case of *Bhajan Lal (supra)*, has in paras 102 and 103 observed as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute

any offence or make out a case against the accused.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and*

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) *Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

13. The case of the petitioner is squarely covered by clauses – (1) and (3) of para 102 of the judgment of the Apex Court in the case of *Bhajan Lal (supra)*.

14. The petition is accordingly allowed and the FIR bearing C.R. No. 168 of 2022 registered with the Mira Road Police Station,

for the alleged offence punishable under Section 3 of the Official Secrets Act, 1923 and consequently, the charge-sheet filed in the Court of the learned Chief Judicial Magistrate, Thane, being No. RCC 1811 of 2022, are quashed and set-aside.

15. Having regard to the peculiar facts of this case, we deem it appropriate to direct the State Government to pay costs of Rs.25,000/- to the petitioner. However, the said costs shall be recovered from the salary of the person/persons responsible for lodging the FIR under Section 3 of the Official Secrets Act and consequently, the persons vetting the filing of the charge-sheet. Costs to be paid to the petitioner within four weeks from the uploading of this order.

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

17. Stand over to 15th February 2023, for recording compliance of the payment of costs and steps taken for recovery of costs from the erring Officers.

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

R. N. LADDHA, J.

REVATI MOHITE DERE, J.