

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION [STAMP] NO.20054 OF 2022

Rohan Tukaram @ Appasaheb Kale] Petitioner
 Vs.
1. Somnath Haribhau Koli]

2. The State of Maharashtra] Respondents

.....
Mr. Prasad Avhad i/b Mr. Chetan Nagare, for Petitioner.

Mr. J.P. Yagnik, A.P.P, for Respondent No.2-State.

.....

CORAM : REVATI MOHITE DERE &
 PRITHVIRAJ K. CHAVAN, J.J.

DATE : 8th DECEMBER, 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 the petition is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.2-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 First Information Report (For short "F.I.R") registered vide C.R. No.0520 of 2021 with the Akluj Police Station, Solapur for the alleged offence punishable under section 3 of the Official Secrets Act, 1923 and consequently the charge-sheet bearing No.157 of 2021 dated 12th August, 2021.

4. Learned Counsel appearing for the petitioner submits that taking the prosecution case as it stands, no offence as alleged is disclosed *qua* the petitioner. He submits that the petitioner's case is squarely covered by the Apex Court decision in the case of **State of Haryana and others Vs. Bhajan Lal and others**¹. Learned Counsel for the petitioner also relied on the order of this Court, in the case of **Ravindra Shitalrao Upadyay Vs. State of Maharashtra through P.S.O Sawangi (Meghe)**,².

1 1992 Supp (1) Supreme Court Cases 335

2 2022 SCC Online Bom 2015

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

6. Perused the papers. According to respondent No.1-original complainant - Head Constable attached to the Akluj Police Station, Solapur, the incident took place on 27th July, 2021, when the petitioner had been to the Police Station. It appears that the petitioner was called by respondent No.1 in connection with an F.I.R, bearing C.R. No.0518 of 2021 registered against him with the very same Police station. According to respondent No.1, when he was taking note of the complaints of the citizens, he found that the petitioner was taking photographs on his mobile. When he checked the petitioner's mobile phone, he saw a photograph taken by the petitioner of the Police Station, from outside with people standing, pursuant to which, he lodged the aforesaid F.I.R, alleging an offence punishable under Section 3 of the Official Secrets Act. After investigation, charge-sheet was filed in the said case. In the said charge-sheet, the Police have annexed the photograph taken by the petitioner, of the Police Station from outside. The said photograph is at page 35 of the petition.

7. We are shocked and appalled, how the concerned Police Officer could have even lodged an offence for the alleged act of taking photograph of the Police Station, from outside, under the Official Secrets Act, as against the petitioner.

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

"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 pass words, 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*, it 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. Admittedly, even according to the prosecution, the petitioner had only taken one photograph (which is at page 35 of the petition) of the people standing outside the Police Station with the Police Station in the background. It is the petitioner's case that he has clicked the said photograph only to show that the

Police Personnel and the persons with whom there was a family dispute and who had opposed the demarcation proceedings were communicating with each other in a friendly manner.

11. We cannot comprehend, how an F.I.R could have even been registered on the basis of the said photograph, that too, for a serious offence under section 3 of the Official Secrets Act. 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. Invocation of section 3 of the Act, which punishes for spying, can have drastic consequences on the person against whom it is invoked. It could impact one's reputation, job, career and so on. It cannot be lightly invoked, to jeopardize someone's life and career. Law cannot be misused / abused and must not be used as a tool for harassing or tormenting persons. It is the duty of the Police to protect people and act in accordance with law.

12. Having regard to what is stated aforesaid, the petitioner's case would squarely be covered by clauses 1 and 3 of paragraph 102 of **Bhajan Lal's** (supra) case, which read thus;

102.....

(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 to not prima facie constitute any offence or make out a case against the accused.

(2).....

(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".

13. We regularly come across cases where F.I.R's are being registered by the Police, under section 3 of the Official Secrets Act, without application of mind, which is a matter of serious concern i.e for acts done in the Police Station, video graphing of discussions in the Police Station, taking photographs within the Police Station, etc, more particularly, when a 'Police Station' is not a prohibited place. To attract the provisions of the Official Secrets Act, the place where the incident takes place has to be a

'prohibited place', as defined in section 2(8) of the Official Secrets Act. Registration of the offence under Section 3 of the Official Secrets Act, as against the petitioner, in the facts, is clearly an abuse of the process of law and if not quashed, would lead to serious miscarriage of justice, which cannot be countenanced.

14. Considering the aforesaid, the petition is allowed. Accordingly, we quash C.R. No.0520 of 2021 registered with the Akulj Police Station, Solapur, consequently, the charge-sheet bearing No.157 of 2021 dated 12th August, 2021 for the alleged offence punishable under section 3 of the Official Secrets Act, 1923 is quashed and set aside.

15. Considering the reason and the manner in which the Act is invoked, we deem it a fit case 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 invoking section 3 of the Official Secrets Act. Costs to be paid to the petitioner within four weeks from uploading of this order.

16. Copy of this order be sent to the Director General of Police, Commissioner of Police, Mumbai and the Home Department, so as to enable them to take appropriate steps to ensure that the Official Secrets Act is not misused. It is also open for the Authorities concerned, to consider whether a senior high ranking level officer be informed when an F.I.R under the Official Secrets Act is lodged, in matters concerning the Police Station, to curb misuse of the Act.

17. Rule is made absolute in the aforesaid terms and the petition is disposed of accordingly.

18. Matter to be kept on **15th February, 2023**, for recording compliance of the payment of costs and steps taken for recovery of costs from the erring Officers.

19. Parties to act upon authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]