



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 273 OF 2024

1. Shahabuddin Shaikh – Aged 34 years,
Occ-Business, R/o, Flat No.565, Elcid
Building Garej No -2, Palinaka,
Dr. Ambedkar Road, Opp: Imppa House,
Mumbai, Mumbai-400050
2. Pravin Sajnani-Aged 68 years,
Occ-Business, R/o.: 301 Eken Heights,
21st Road, Bandra West, Mumbai-400050
3. Aditya Deepak Anand-Aged 45 years,
Occ-Business, R/o, 23 Rajiv Apartments,
Zig Zag Raod, Opp. Wellness Forever,
Bandra West, Mumbai-400 050.
4. Delvin Lobo @ David-Aged 39 years,
Occ-Business, R/o, 115-B,
Belle View 2nd Floor,
Dr. Ambedkar Road, Pali Naka,
Mumbai-400050.
5. Clyde Savio Fernandes-Aged 34 years,
Occ-Business, R/o. 115, B/Belle View,
Ground Floor Flat no.4,
Dr. Ambedkar Road,
Opp to Imppa House, Bandra West,
Mumbai 400050

.....Applicants

Vs.

1. The State of Maharashtra
At the instance of Khar Police Station
(CR No.1039/2023)
2. Nikhil Vijay Bagalkotkar 41 yrs.,
r/o. 904, Avenue 51, Sundernagar,
Santacruz (W), Mumbai- 400054

.....Respondents

Mr. Milind Dhande i/by Ms. Jameela Damani, with Ms. Divya Tiwari for the Applicants.

Smt. Madhavi H. Mhatre, APP, for Respondent No.1-State.

Mr. Hrishikesh Giri with Mr. Swapnil Chopade, for Respondent No.2.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**

DATE : 3rd JULY, 2024.

JUDGMENT :- (Per Dr. Neela Gokhale, J.)

1) Rule. Rule made returnable forthwith and with the consent of all the parties, the Petition is heard finally.

2) The Petitioners seek quashing of FIR in C.R.No.1039 OF 2023 registered with the Khar Police Station, Mumbai filed by the Respondent No.2 herein (“Original Complainant”) for offences punishable under Sections 341, 352, 504, 506 read with 34 of the Indian Penal Code, 1860 (“IPC”).

3) The Petitioners are the members of the Managing Committee of the “Holy Family Premises Co-operative Housing Society” and the Respondent No.2 is a purchaser of the G+1 admeasuring 650 Sq.ft. house along with 200 Sq.ft. open space (“the said property”) in front of the property belonging to the “Holy Family Premises Co-operative Housing Society”. The F.I.R. reveals that the complainant was required to pass through the gates of the society premises as according to him, he had no other approach road to his property.

3.1) It is the complainant’s contention that he has obtained all the

necessary permissions from the Competent Authorities to use and occupy the said place for commercial purposes. Hence he started renovation work in the said property. The complainant states that, when his workers undertook the renovation work at the site, the Petitioners forcefully restrained the workers from doing their job. The Petitioners then called up the main control room after which the police temporarily stopped the renovation work in order to maintain peace.

3.2) Again on 3rd December 2023, when the complainant's wife went upon their property, the gates of the Society were locked. Thereafter, when she enquired about the same, it was informed to her that, she along with her family members and other staff were prohibited from passing through the society gates and carrying out any renovation works. When the complainant approached the Petitioners with an intent to resolve the issues, the Petitioners physically assaulted him. This led to the filing of the F.I.R. impugned herein.

4) Heard Mr. Dhande, learned counsel for the Petitioners. Mr. Dhande argued that, except for offences mentioned under section 341 of the IPC, all other offences registered in C.R.No.1039 of 2023 are non-cognizable in nature. It is his contention that, Section 341 of the I.P.C. was added by the complainant in order to give the entire F.I.R. a criminal flavor and there was no such instance of voluntary obstruction. The Petitioners have also placed on record the legal notice sent to the complainant

requesting the copies of original sale/title deeds to verify the ownership, however the same was unattended by the complainant. Stating this, the Counsel for the Petitioners has drawn our attention to the existence of the civil dispute pending regarding the said property.

4.1) Smt. Mhatre, the learned APP supports the contentions made in the F.I.R. impugned. Learned counsel for Respondent No.2 opposed the Petition. He submitted that the Respondent No.2-complainant already had procured all the necessary permissions from the Competent Authorities to use and occupy the premises for commercial purpose. The Respondent No.2-complainant had no other approach to his property except from the premises of the Society. He thus submitted that, there are no merits in the Petition and it may be dismissed.

5) The law regarding exercise of jurisdiction under Section 482 of Cr.P.C. to quash complaint and criminal proceedings has been succinctly summarized by the Apex Court in the case of *Indian Oil Corporation v. NEPC India Limited and Others*.¹ It will be apposite to refer to the following observations of the Supreme Court in the said case, which read thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To

¹ (2006) 6 SCC 736; 2006 INSC 452.

mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out:

(a) purely a civil wrong; or

(b) purely a criminal offence; or

(c) a civil wrong as also a criminal offence.

6) A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash

the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

7) It is sufficiently clear that, the F.I.R. in the present case makes out a prima facie case against the Petitioners. From a plain but careful reading of the F.I.R., it is seen that the Petitioners have tried to browbeat the Complainant and restrain him from entering his own property. They have tried to give the entire circumstances the color of civil litigation. However there is categorical allegations of assault and wrongful restraint made by the complainant. Mr. Dhande has tried to raise a property dispute relating to the said property and relies upon a notice issued by the society through their Advocate to the Corporation alleging illegal construction. However in our jurisdiction under Article 226 of the Constitution of India, we are not expected to conduct a mini trial to ascertain the facts of the case.

8) Upon perusal of the allegations in the F.I.R., the documents on record along with the F.I.R., we are of the considered opinion that the allegations in the F.I.R. fulfill the ingredients of all the above provisions. There are categoric allegations of wrongful restraint and physical assault. Furthermore, the act of the Petitioners in prohibiting the complainant is sufficient to prima facie demonstrate restraint of complainant by the Petitioners and obstructing him and/or agents from entering his own property. Although the Petitioners have tried to make out a case of

ownership of the said property, at this stage we cannot hold a mini trial of the case in our jurisdiction under Article 226 of the Constitution. The Petitioners are at liberty to agitate their defense by availing alternate remedy under the Code, if so advised.

8.1) In this view of the matter, we have no hesitation in holding that, this is not a case justifying quashing the F.I.R. Having thus heard all the parties on merits, we are not inclined to quash the criminal proceedings against the Petitioners.

9) The Criminal Application is dismissed. Rule is accordingly discharged.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)