

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.117 OF 2015

Ravindra Dattatrya Dalvi

...Petitioner

Versus

State of Maharashtra & Anr.

...Respondents

.....

Mr. Pawan Mali for the Petitioner.

Mrs. M.D. Munot for Respondent No.2.

Mr. S.K. Shinde, PP a/w. Mr. K.V. Saste, APP for Respondent No.1-State.

**CORAM : RANJIT MORE &
M.L. TAHALIYANI, JJ.**

DATED : MARCH 11, 2015.

P.C.

Heard learned counsel for the Petitioner, Respondent No.1
and the learned APP for the State.

2. This petition is filed under Article 226 of the Constitution of India for quashing the proceedings of FIR bearing C.R. No.102/2014 registered at Vanrai Police Station, Goregaon against the Petitioner at the instance of Respondent No.2 for the offences punishable under section 8 read with Section 21 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (hereinafter called the 'said Act').

3. On 16-12-2013 a written complaint was filed by Vinod Joshi, a member of co-operative housing Society where the Petitioner is also residing. On the basis of this complaint, initially NC was registered on 15-5-2014. The investigating agency thereafter approached the learned Metropolitan Magistrate, 17th Court, Borivali under section 155 (2) of the Criminal Procedure Code, 1973 for appropriate orders. Learned Magistrate thereafter by order dated 25-9-2014 gave permission to investigating agency to investigate the NC and to see whether cognizable offence is made out or not. Investigating Officer thereafter straightway registered the FIR in question.

4. Learned counsel for the Petitioner invited our attention to the provisions of section 8(1) and section 21(1) of the said Act and submitted that the offence under section 8(1) is non cognizable. He further submitted that the allegations made in the complaint by Shri Vinod Joshi as a whole are that the petitioner has trimmed around 4 to 5 Ashoka Trees by cutting its branches. He submitted that the trimming of trees cannot by any stretch of imagination said to have caused damage to the trees in question. He lastly submitted that the said FIR is required to be quashed.

5. Learned counsel for Respondent No.2 has submitted that initial NC was recorded on the basis of complaint of Shri Vinod Joshi and thereafter FIR was registered by the Investigating Agency pursuant to order passed by the Magistrate under section 155 (2) of the Cr.P.C. Learned APP submitted that if offence under section 8(1) (b) of the said Act is non cognizable, FIR could not have been registered.

6. Having considered rival submissions and having gone through the allegations made in the FIR, we are of the considered opinion that the continuation of the proceedings of the said FIR would be abuse of the process of law. The copy of the FIR is annexed at page 17 and statement of Respondent No.2 is annexed at page 20. Perusal of the entire statement discloses that only allegation against the Petitioner is that he has trimmed some trees by cutting off their branches. We have to see the question that whether trimming of the trees by cutting their branches can be said to be an offence under section 8 (1) of the said Act. Section 2(c) of the said Act defines “to fell a tree” as under :

“to fell a tree” includes burning or cutting or in any way damaging a tree.”

7. It is not the case of the prosecution that the Petitioner has

burnt or cut the trees. Thus, the only question which deserves consideration is as to whether trimming of trees by cutting their branches can be said to be “felling of the trees” or in any way damaging the trees. Petitioner has also annexed photographs of the Ashoka trees taken on 8-1-2015. Respondent No.2 and learned APP do not dispute that the photographs belong to the trees in respect of which allegations are made in the FIR. Perusal of the photographs show that the trees are intact. We are also of the considered view that in the present facts and circumstances of the case the trimming of the said trees cannot be said to have caused any damage. Trimming probably even assumed is for gardening purpose.

8. Be that as it may, the offence under section 8 (1) of the said Act as stated by learned APP is non-cognizable offence. In fact, initial NC complaint was registered. In pursuance of the application of the Investigating Officer though the Magistrate granted permission under section 155(2) of the Criminal Procedure Code, investigating agency could not have registered FIR as the offence under section 8 (1) is non-cognizable and it is not the allegation of the prosecution that the Petitioner has committed any other offence other than offence under section 8 (1) of the said Act.

9. In above facts and circumstances, we are of the view that FIR does not disclose commission of any offence and continuation of the FIR in question would be abuse of the process of law. In such circumstances, continuation of the said FIR cannot be allowed.

10. In the light of above discussion writ petition is allowed in terms of prayer clause (a).

[M.L. TAHALIYANI, J.]

[RANJIT MORE, J.]