

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1024 OF 2012

Miss Rekha Premchand Safari
R/o : Flat – 1401, Ramkrupa
Building, 25, Parekh Street,
Mumbai – 400 004

.....Applicant
(Original
complainant)

V/s.

1) The State of Maharashtra
2) Mr. Lakhu Merchant
R/o : 901/902, Ramkrupa Building 25,
Parekh Street, Mumbai – 400 004
3) Mr. Viren Ved
R/o : Flat – 703, Ramkrupa Building 25,
Parekh Street Mumbai – 400 004

....Respondents

Ms. Rekha P. Safari Applicant in person
Mrs. U. V. Kejariwal APP for the State
Mr. Satya M. Shettigar for Respondent nos. 2 & 3

CORAM : V. L. ACHLIYA, J.

RESERVED ON : 09/04/2015

PRONOUNCED ON : 30/06/2015

P.C.

1) By this application filed u/s 482 of Cr.P.C., the applicant has sought the indulgence of this Court to set aside the order dated 16/11/2011 passed by

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Metropolitan Magistrate, 18th Court, Girgaum, Mumbai to dismiss the complaint filed by petitioner as well as the order dated 09/05/2012 passed by Sessions Court, Mumbai in Revision Petition No. 168 of 2012 to dismiss the revision petition filed against order passed by Magistrate.

2) I have heard the applicant and the learned counsel appearing for respondent nos. 2 & 3 as well as the learned APP for the State and perused the record and proceeding of Criminal Case No. 61/SW/2010 & Revision Petition No. 168 of 2012.

3) In nutshell it is the say of applicant that while examining the complaint for limited purpose of taking cognizance and issuance of process, the Magistrate has to examine the matter in limited sphere to see as to whether the allegations made in the complaint together with documentary evidence, if any relied in support of allegation made in complaint make out any prima facie case for issuance of process. It is contended that the complaint filed by applicant prima facie discloses the commission of offence u/s 341, 504, 506 (II) r/w 34 of I.P.C. by the accused, still the learned Magistrate refused to issue process against and dismissed the complaint. According to applicant, the learned Magistrate has erred in giving too much weightage to report of inquiry u/s 202 of Cr.P.C. called from concern police station and statement of watchman employed in the society. It is contended that the learned Additional Sessions Judge also erred in dismissing the revision petition. In support of her contention, the applicant has relied on decision of Apex Court in the case of **Anil Saran Vs. State of Bihar** reported in **AIR 1996 Supreme Court Cases, 204**, **Chand Dhawan Vs. Jawahar Lal and others** reported in **1992 (3)**

Supreme Court Cases, 317 & Kewal Krishan Vs. Suraj Bhan and another reported in **AIR 1980 Supreme Court, 1780.**

4) Per contra, the learned counsel representing the respondent nos. 2 & 3 supported the orders passed by both the Courts below and submitted that the complaint discloses no case for issuance of process u/s 341, 504, 506 (II) r/w section 34 of I.P.C. The learned counsel submitted that on due consideration of complaint filed by complainant, the learned Magistrate called report u/s 202 of Cr.P.C. by directing the officer of concern police station to ascertain as to whether there is any cause for issuance of process. The officer in charge of concern police station conducted the inquiry as directed by learned Magistrate & submitted report of inquiry with statement of various persons, which includes statement of complainant and other persons. Considering the report of inquiry, the learned Magistrate has refused to take cognizance of complaint and pleased to dismiss the complaint u/s 203 of Cr.P.C. It is therefore contended that the order passed by learned Magistrate deserves no interference in exercise of inherent jurisdiction of this Court u/s 482 of Cr.P.C. The learned counsel has relied on the decision of Hon'ble Apex Court in the case of **Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and another** reported in **AIR 1960 Supreme Court, 1113.**

5) I have considered the submission advanced in the light of record and proceeding of the case. In my view, no case is made out by applicant to invoke powers u/s 482 of Cr.P.C. By and large, it is settled position in law that though no straight jacket formula can be laid down as to when the powers u/s 482 of Cr.P.C. to be exercised. The powers u/s 482 of Cr.P.C. are extra

ordinary powers vested with the Court and same cannot be utilized as a matter of routine. Primarily such powers are expected to be used to make such order as may be necessary to give effect to any order under the Code of Criminal Procedure or to prevent abuse of process of law of any court or otherwise to secure the ends of justice. The expression abuse of process of law or to secure the ends of justice do not confer unlimited jurisdiction in High Court to use such powers. Such extra ordinary powers are expected to be used sparingly. In my view, the case in hand do not warrant exercise of extra ordinary powers u/s 482 of Cr.P.C. as the impugned order passed by Magistrate can not be termed as passed in gross abuse of process of law or involves a case of such in nature which requires exercise of powers to secure ends of justice.

6) Perusal of the record and proceedings of the case reveals that the complainant presented the complaint before learned Magistrate on 21/04/2010 alleging therein that on 19/04/2010, at about 9.30 am, while she was carrying some cartoons of biscuits to her flat, the accused nos. 1 & 2 acting in furtherance of criminal conspiracy came down and prevented her from using the lift. They have abused her in filthy language and also caused threats to cut into pieces by hiring Goondas. Except the bare allegations made in complaint, the same are not supported with any other evidence. The learned Magistrate on consideration of allegations made in complaint felt it necessary to call report from police as contemplated u/s 202 of Cr.P.C. Pursuant to order of the Court, the Senior P.I., D. B. Marg Police Station, conducted inquiry. It appears that during the course of inquiry, beside the statement of complainant, the statements of about 5 to 6 other persons, which includes the statement of

constable who visited the spot after telephonic call from complainant, the watchman who was on duty at the alleged date & time of incident & some office bearers of society were recorded. On conclusion of inquiry, the Senior P. I. of said police station submitted the detail report along with some photographs of lift under repair and copy of order discharging accused in a case based upon more or less identical facts registered at the instance of applicant. The police officer has mentioned in report about the ongoing dispute between complainant and office bearers of society as well as proceeding pending before Registrar of Co-operative Societies. Police officer has observed in his report that no substance found in complaint of complainant. On due consideration of report of inquiry, the learned Magistrate has dismissed the complaint in exercise of powers u/s 203 of Cr.P.C. which is maintained by Sessions Court. I am therefore of the view that order passed by Magistrate calls for no interference.

7) Even considering the submission advanced on merit, I do not see any reason to invoke powers u/s 482 of Cr.P.C. The order passed by learned Magistrate is well reasoned and supported by report of inquiry called in the matter u/s 202 of Cr.P.C. The applicant/complainant claims to be advocate by profession. There appears to be dispute between the complainant and accused on account of payment of maintenance charges. The incident dated 19/04/2010 appears to be arose all of sudden on account of use of lift to carry large number of boxes (cartons) of biscuit on upper floor of building by the complainant. Therefore, the order passed by Magistrate cannot be said to be illegal or wrongful refusal of exercise of jurisdiction vested with Magistrate.

8) The rulings relied by learned counsel for the applicant broadly lays down the principles to be borne in mind while examining the complaint for limited purpose to find out as to whether a *prima facie* case is made out or not for issuance of process. It is settled position in law that while exercising powers to issue process, the Magistrate has to apply his mind to find out as to whether *prima facie* case made out or not for issuance of process as the issuance of process results in to serious consequences. It is settled position in law that while issuing process, the Magistrate is supposed to act cautiously and diligently. The process cannot be issued in a criminal case merely on asking of the complainant. Person who approaches the court of law to take cognizance of the complaint and to issue process he has to make out a *prima facie* case for issuance of process. *Prima facie*, case pre supposes the case of the nature that the allegations made in the complaint together with the evidence, if any, relied in support of complaint, if proved the accused will be liable for the offence for which the complainant has filed complaint. Although the detail inquiry is not expected at the stage of issuance of process but the limited inquiry to satisfy itself that a *prima facie* case is made out or not for issuance of process as contemplated u/s 204 of Cr.P.C., certainly falls within the domain of Magistrate and expected to be made before passing order of issuance of process. While issuing the process, the Magistrate is expected to look into the allegations made in the complaint together with the documents relied as evidence and then to consider as to whether any *prima facie* case for commission of alleged offence has been made out or not.

9) In view of above, there is no merit in the application filed by complainant and the application deserves to be dismissed. Accordingly, application is dismissed with no order as to costs. The original record and proceeding be sent back to respective Courts.

(V. L. ACHLIYA, J.)