

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.23 OF 2015

Dr.Arshad Kamal Shaikh ..Applicant
-Versus-
The State of Maharashtra & Ors. ..Respondents

Mr.A.K.Wanwari for applicant
Mr.B.K.Deshmukh, APP for State
Mr.Shamim i/b. Shamim & Co. for respondent Nos. 1 and 3

CORAM : M.L.TAHILIYANI, J.

DATE : 12th January 2015.

P.C.

1] Admitted. Heard finally. The applicant is the complainant in Criminal Case No.30/SW/2007 pending in the court of Metropolitan Magistrate, Kurla. The applicant had filed a complaint against the respondent Nos. 1 to 5 for the offences punishable under section 323, 341, 451, 452, 379, 504, 506 read with 34 Indian Penal Code.

2] The complaint was sent to the police for investigation pursuant to the order passed by the Magistrate under section 156(3) of

Cr.P.C. The police had submitted a report that it was a civil dispute. The applicant, therefore, filed a protest petition. After hearing the parties, the learned Magistrate came to the conclusion that the case for offences punishable under the above sections was made out for issuing process.

3] Therefore, the summons were issued to respondent Nos. 1 to 5. After appearance of respondents Nos. 1 to 5 before the trial court, evidence of the applicant before charge was recorded. After recording of evidence before charge, the learned Magistrate came to the conclusion that the complaint needed to be disposed of under section 245(1) of Cr.P.C. He did not find material to frame any of the charges as alleged by the applicant in the complaint.

4] I have gone through the order of the Magistrate. I have also heard the learned Counsel Mr.Vanwari for applicant and Mr.Shamim for respondent Nos. 1 to 5 so also Mr.Deshmukh, learned APP for State.

5] In the first place it may be mentioned here that the learned

Magistrate without referring to the evidence before the charge has come to the conclusion that no case was made out. The Magistrate failed to take note of the fact that the applicant in his evidence (P.W.1) has stated that the respondent Nos. 1 to 5 have entered his flat and had manhandled him. The entry by the respondent Nos. 1 to 5 was obviously without permission and was to the annoyance of the applicant. As such prima facie case of only trespass was made out. What is pertinent to note that though the complaint runs in to more than five pages, the evidence of P.W.-1 is cryptically recorded. The learned Magistrate has not made any attempt to get the facts of the case in detail on record. No doubt, there was an Advocate on record on behalf of the applicant but at the same time, role of the Magistrate or Judge while conducting the trial is equally important. The Magistrate cannot be a silent spectator to the proceedings. Wherever necessary, he has to step in and participate in the proceedings. Ultimately, the aim of the criminal trial is quest for truth and to reach the truth, the Magistrate or Judge, as the case may be, has to take part in the proceedings to the limited extent permissible under the law.

6] This duty was not discharged by the Magistrate properly considering the way in which the evidence of P.W.1 was recorded. In the circumstances, it would be appropriate to set aside the order of the Magistrate and to direct the Magistrate to put P.W.1 in the witness box again and to put certain questions to him with a view to find out as to whether the incident as alleged in the complaint had occurred. Obviously, the respondent Nos. 1 to 5 will have the opportunity to cross examine the P.W.1.

7] Hence, I pass the following order:-

(a) The impugned order passed by the Magistrate is set aside;

(b) It is directed that P.W.1 shall be further examined by the Magistrate himself to the limited extent of finding out as to whether the incident as alleged has occurred or not;

© It is made clear to the Magistrate that it should not be a full-fledged examination like examination in chief by the lawyer of

the applicant.

(d) The revision application is disposed of in the aforesaid terms.

(M.L.TAHILIYANI, J.)