

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 527 OF 2004

Mandar Madhav Dabholkar,
Age 33 years, Occ. Service
R/o Shahanoormiya Dargah Road,
Aurangabad.

..Petitioner

Versus

The State of Maharashtra

..Respondent

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Advocate for Petitioner : Shri Tribhuwan Nitin T.
APP for Respondent : Shri Karlekar S.G.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 23, 2016
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the order dated 10.11.2003, delivered by the learned Magistrate, thereby rejecting the application of the petitioner seeking discharge from the offences punishable under Sections 342 and 506 of the Indian Penal Code. The petitioner is also aggrieved by the order dated 9.7.2004, by which his revision petition has been rejected.

2. The petitioner contends that the complaint filed by the complainant is vague and ambiguous. Specific accusations against the petitioner have not been mentioned in the complaint. Issue is as regards the petitioner entering in the premises of the complainant

factory to dismantle the machinery.

3. It is further submitted that in fact, the complainant himself had issued a letter dated 6.7.2002, requesting the petitioner to take out the machines from his factory or sell them. A letter dated 19.9.2002 was written by the workers of the complainant factory informing the petitioner that the Labour Court has granted prohibitory orders on removing the machine from the factory of the complainant.

4. It is strenuously submitted on behalf of the petitioner that he, neither by his own act attempted to remove the machinery, nor was he aware of the Labour Court's orders. Since he was authorised by the complainant to remove the machines, he had entered the factory on 20.9.2002 at about 11.00 am. It is further strenuously submitted that the petitioner neither confined the complainant in his office in between 11.00 am to 6.00 pm nor did he issue threats to the complainant. A false case has been put forth by the complainant and the petitioner has been falsely implicated. He submits that no such incident occurred, much less, at the behest of the petitioner.

5. He further submits that the manner in which the petitioner allegedly confined the complainant to his office, is also not spelt out. Specific details as regards to the actual act committed by the petitioner have not been stated in the complaint. He, therefore, submits that the

impugned order rejecting the application of the petitioner to discharge him and the dismissal of the revision petition are perverse and erroneous orders and hence they are required to be quashed and aside.

6. The learned APP on behalf of the State submits that if there is some material at the *prima facie* stage before the learned Magistrate, an application for discharge need not be entertained. The complaint filed by the complainant makes out a case against the petitioner. The detention of the complainant by the petitioner and the threats issued by him, have been mentioned in the first information report. The words used by the petitioner are also mentioned.

7. He further submits that whether there is sufficient material to convict the petitioner or not, is not to be seen at a stage prior to the trial. It would be a matter of evidence and the petitioner would get an adequate opportunity to prove his innocence.

8. I have considered the submissions of the learned Advocates.

9. The learned Magistrate as well as the learned Additional Sessions Judge have rejected the request of the petitioner seeking discharge from the proceeding. The contents of the complaint and the material available has been considered by the learned Magistrate while rejecting the application for discharge on 10.11.2003. The statement of the

complainant has been considered and the learned Magistrate has arrived at a *prima facie* conclusion that there was material on record to prosecute the accused. I also find from the judgment of the revisional Court that the said statement has been discussed and both the courts below are convinced that the application for discharge deserves to be rejected.

10. I find that the contention of the petitioner that there is no material at all, so as to initiate prosecution, appears to be fallacious in view of the material considered and discussed by the Courts below. At this stage, without drawing any conclusion, even if it is assumed that the communication dated 16.7.2002 by the complainant permitting the petitioner to take out the machines or to sell them is true, yet the order of the Labour Court preventing the removal of the machines from the factory could not have been bye-passed or disobeyed. In this backdrop, it appears that the petitioner exerted pressure on the complainant and illegally confined him to his chamber for a period of about six and half hours.

11. In the light of the above, I do not find any merit in the petition and the same is, therefore, dismissed.

12. Rule is discharged.

13. It, however, be noted that the observations of this Court are restricted only to the extent of the application for discharge filed by the complainant and would not tantamount to any decision on the merits of the matter. The learned Magistrate is, therefore, at liberty to decide the said proceedings on their own merits. All contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

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