

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1304 OF 2015

Mr. Yusuf Ahmed Kasmani and Ors

.....Petitioners

V/s.

The State of Maharashtra and another

....Respondents

Mr. Omkar Waranje h/f Mr. Amul Jawale Advocate for Petitioner.

Ms. V. S. Mhaispurkar APP for the State.

CORAM : RAVINDRA V. GHUGE, J.

DATED : JULY 11, 2016.

PC :

1) The Petitioner is aggrieved by the order dated 09/01/2013, passed by the learned Additional Chief Metropolitan Magistrate at Borivali, Mumbai by which process has been issued.

2) The learned Advocate for the Petitioner has strenuously criticized the impugned order. The grievance is that process has been issued against the Petitioners under section 323 of the Indian Penal Code without proper application of mind. A false complaint has been lodged against the Petitioner stating therein that the Petitioners restrained the complainant/Respondent no. 2 herein from entering into the house which is a tenanted property and restrained her from taking her articles mentioned in the complaint. No such

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incident had occurred. A false case has been put forth. The allegations of abuse and use of foul and filthy language has been falsely stated so as to implicate the Petitioners.

3) It is further submitted that by the impugned order dated 12/01/2015, the learned Additional Sessions Judge has erroneously dismissed Criminal Revision Application filed by the Petitioners.

4) I have considered the submissions of the learned Advocate and have gone through the grounds set out in the memo of the petition.

5) The complainant/Respondent no. 2 herein is said to have entered into a leave and licence agreement with M/s P. M. Enterprises and by virtue of the said agreement, she is entitled to use and occupy the premises for the period of 01/06/2009 till 31/05/2012. The allegation is that these Petitioners (accused in the Trial Court) had not only restrained the complainant from using the property in pursuance to the licence, but had abused her in foul and filthy language, had slapped her and assaulted her. It is stated that she was rescued by passerby persons and witnesses.

6) After issuance of process, the Petitioners had approached the learned Sessions Court by filing the Criminal Revision Application. By the impugned

Judgment, it is observed that the licence period was for 3 years and without allowing the licence period to expire, the accused had intimidated the complainant and for the reasons stated in the complaint, had compelled her to leave the premises. Her articles were retained and she was prevented from taking away her articles.

7) It is Trite Law that after following the due procedure laid down in the Code of Criminal Procedure, 1973, the learned Magistrate can issue process, upon coming to a *prima facie* conclusion that there was some material available on record which would justify the prosecution of the accused.

8) I do not find that the learned Magistrate and the learned Additional Sessions Judge have committed any error in considering the material available and having come to a *prima facie* conclusion that the Petitioners/accused need to be prosecuted for the offence punishable under section 323 of Indian Penal Code.

9) In the light of the above, I do not find any reason to entertain this petition and the impugned order calls for no interference. Being devoid of merit, this petition is therefore dismissed.

(RAVINDRA V. GHUGE, J.)