

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.467 OF 2016

IN

CRIMINAL APPEAL NO.263 OF 2016

1) GENSIDHA @ PAPPU DIGAMBAR MORE)
2) SUNIL PRABHAKAR KALE)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Jaydeep Mane, Advocate for the Applicants.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : P. N. DESHMUKH, J.

DATE : 27th SEPTEMBER 2016.

P.C. :

1 This application is filed for suspension of substantive sentence of imprisonment imposed upon applicants and for grant of bail. Learned counsel for applicants had submitted that there is no sufficient evidence to establish involvement of applicants in the offence punishable under Section 392 of IPC. It is contended that the incident took place in a beer shop situated in a thickly populated locality and inspite of that, no independent witnesses are examined and by examining interested witnesses, applicants are falsely implicated, as

applicants were raising objection to complainant to not to allow customers to consume beer in his beer shop, where he was only allowed to sell the product. It is, therefore, contended that, applicants since are falsely implicated and were on bail pending trial, application be allowed.

2 Learned APP opposed the application contending that applicants had visited the beer shop of complainant to collect contribution and demanded Rs.50,000/- from complainant to arrange for celebration of Dr.Babasaheb Ambedkar Jayanti, and since complainant was not in a position to make such payment, applicants along with co-accused, looted amount of Rs.2500/- from his shop counter. It is, therefore, prayed that having considering facts as aforesaid, applicants are not entitled for grant of bail, as their act does not establish their demanding such contribution from complainant, as per his will, but the demand made by applicants was not only exorbitant but amounts to extortion.

3 Perused the compilation of evidence along with report. From its contents it reveals that on applicants demanding amount of Rs.50,000/- as donation for celebration as aforesaid, however

complainant expressed his inability to part away with such huge amount, upon which, he was subjected to abuses by the applicants and co-accused. From the contents of report, it further reveals that co-accused Vishnu in the course of same transaction, put his hand into the counter of complainant's shop and robbed cash of Rs.2500/-, when both the applicants were assaulting the complainant.

4 Name of one Vikas Kale reveals in report as an eye witness to the incident. On perusal of his evidence, it is found that he is totally silent about applicants' or co-accused forcibly removing any amount from the counter of complainant's shop, as his evidence reveals that in his presence, applicants along with co-accused and 2/3 unknown persons arrived in the beer shop and demanded donation to the extent of Rs.50,000/-, which was refused to be paid by the complainant and thereafter said accused persons caused damaged to beer bottles and other material in the beer shop.

Similarly, with reference to specific case of applicants of their objecting complainant to allow his customers to consume beer in the shop, further evidence of Vikas Kale reveals that complainant was not allowed to allow his customers to consume beer in his shop. However, complainant used to always allow his customers to sit and

consume beer in the shop itself. In that view of the matter, prima facie there appears substance in the case of applicants of their false implication as they were objecting complainant to not to allow his customers to consume beer in the shop.

5 Having considering facts as aforesaid, and as applicants were found tried as original accused nos.2 and 3 and are found convicted for the offence punishable under Section 392 of IPC and are sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for 3 months, and for the offences punishable under Sections 385 and 427 of IPC, for which, on both counts, they are sentenced to suffer rigorous imprisonment for a period of 6 months and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for 1 month, application is liable to be allowed by suspending the substantive sentences imposed upon applicants and by granting bail to them, as it is no case of prosecution that while on bail, applicants had misused the liberty granted to them. Hence, following order is passed :

- i) Applicants shall be released on bail on their executing P.R.Bond in the sum of Rs.20,000/- each, with one surety each in like amount.

- ii) While on bail, applicants shall mark his presence with MIDC Police Station, District Solapur, once in three months, on the first day of such month, pending appeal.
- iii) Applicant shall provide proof of his residence to the Investigating Officer and change in address in future, if any, to the concerned police station.
- iv) Application is allowed in above terms.

(P. N. DESHMUKH, J.)