IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.447 OF 2016

Praval Deepak Karekar ... Applicant
v/s
State of Maharashtra and another ... Respondents

Mr Kuldeep S. Patil for the Applicant.
Ms M.H. Mhatre, APP for the Respondent No.1.
Mr Anand Shivaji Patil for the Respondent No.2.
Mr Sagar Ramchandra Khare, PSI, Rajarampuri Police Station, Kolhapur present.

CORAM: A.S. OKA AND A.A. SAYED JJ.

DATE : 3RD OCTOBER 2016.

ORAL JUDGMENT (PER A.S. OKA, J.) :-

1. Rule. The learned APP waives service for Respondent No.1. Leaned counsel appearing for Respondent No.2 waives service.

2. Considering the narrow controversy involved in this

Application, the same is forthwith taken up for final hearing. The prayer in this application under Section 482 of the Code of Criminal Procedure 1973 (for short, Cr.P.C.) is for quashing the FIR registered vide C.R. No.84 of 2016 at Rajarampuri Police Station, Kolhapur for the offences punishable under Sections 147,148,149,307,504 of Indian Penal Code and Section 37 r/w section 135 of the Maharashtra Police Act, 1951.

3. The incident is of 29th March 2016. It is alleged by the Respondent No.2 that at about 7.00 p.m., he was proceeding by a motorcycle from Janata Bazar towards Shahu Mill, Kolhapur. He stated that his motorcycle slipped and he fell down. As he suffered minor injuries, he went back to his house and after informing his brother and father, he proceeded towards Rajarampuri via Yadav Nagar for the purpose of medical treatment. He alleged that at about 7.30 p.m., when he was at Rajarampuri, one Ganesh came on motorcycle in front of him and forced him to stop his motorcycle. He alleged that the present applicant was a pillion rider of the said Ganesh. Ganesh took out a sword and the present Applicant took

out an iron rod. The allegation is that Ganesh assaulted the Respondent No.2 with the sword and the present Applicant assaulted him with an iron rod.

4. The prayer for quashing the FIR is on merits as well as based on affidavit of the Respondent No.2. The Respondent No.2 filed an affidavit stating that he had not named the Applicant in the FIR as he was not present at the time of incident and therefore, he has no objection for quashing the offence.

5. Our attention is invited to the report dated 10th August 2016 submitted by the Investigating Officer to the learned Judicial Magistrate, First Class, Court No.6, Kolhapur. It records that an anticipatory bail was granted to the applicant by the Sessions Court. On 7th August 2016, the Applicant appeared at the Police Station and by showing his formal arrest, he was immediately enlarged on bail. The report records that the version of the Respondent No.2 that the present applicant was involved in the offence is false and it was revealed that the Applicant was not involved in the offence. In the

report, a prayer was made by the Investigating Officer to grant permission to release the Applicant in accordance with provisions of Section 169 of Cr.P.C. On the said report dated 10th August 2016, the learned Magistrate passed an order "the report is seen and filed." On 17th August 2016, another report was filed by the Investigating Officer before the learned Magistrate. The said report records that when the offence was committed, the Applicant was admitted to City Hospital, Kolhapur as an indoor patient and the said fact is established on the basis of medical certificate and statement of Medical Officer of the City Hospital. It is further recorded that a report has already been submitted to release the Applicant. Moreover, it is stated that as the offence has been committed only by four persons, sections 147, 148 and 149 of IPC are being deleted.

6. On 30th September 2016, another report was submitted by the Investigating Officer to the learned Magistrate. The report reiterates that the allegation made by the Respondent No.2 about involvement of the Applicant is false. Again, a prayer was made for grant of permission to release the Applicant under Section 169 of

Cr.P.C.

7. On 1st October 2016, the Investigating Officer was directed by this Court to produce the record of investigation. Today, the learned APP, on instructions of the Investigating Officer who is present in Court, states that on investigation, it was found that the Applicant is not involved in the offence. We accept the said statement.

8. Section 169 of Cr.P.C. reads thus :-

> "169. Release of accused when evidence deficient - If, upon an investigation under this Chapter, it appears to the officer in-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the office on a police report, and to try the accused or commit him for trial."

9. In the present case, the Applicant was already released on bail. The power under section 169 of Cr.P.C is of the Officer In-

Charge of the Police Station to release a person in his custody on executing a bond provided the the conditions incorporated in Section 169 are satisfied. For exercising the power under section 169 of Cr.P.C, a permission or consent of the learned Magistrate is not required. Therefore, the Investigating Officer had no occasion to submit the reports dated 10th August 2016 and 30th September 2016 before the Learned Magistrate seeking permission to release the Applicant under Section 169 of Cr.P.C.

10. Nevertheless, the reports dated 10th August 2016, 17th August 2016 and 30th September 2016 submitted by the Investigating Officer show that on investigation, it was revealed that the applicant was not present at the time of incident and he is no way involved in the ofence. This fact is confirmed today by the learned APP from the Investigating Officer.

11. Therefore, this a fit case to exercise the power under section 482 of Cr.P.C. to quash the offence as against the Applicant.

12. Respondent No.2 / first informant has filed an affidavit stating that he has not named the Applicant in the FIR and that it is not desirable to prosecute the Applicant. Once the FIR Is registered, it is for the Police to find out who is the accused. It is not for the first informant to dictate to the Police as to who should be made accused and who should not be made accused. On the basis of such affidavit filed by the first informant, the power under section 482 of Cr.P.C. cannot be exercised.

13. Subject to what is observed above, we dispose of the Application by passing the following order :-

> "(i) C.R. No.84 of 2016 registered at Rajarampuri Police Station, Kolhapur stands quashed only in relation to the present Applicant;
>
> (ii) We make it clear that we have made no adjudication on the role played by other persons shown as accused;
>
> (iii) Rule is made absolute on the above terms.

(iv) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED J.) **(A.S. OKA J.)**