

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 572 OF 2015

Smt. Vijaya V. Dhawale & Ors. ..Applicants

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Arashad Shaikh i/w. Hemant Ingale i/b. Prashant Goyal for the Applicant

Mr. J.H.Ramugade, APP for the Respondent-State.

Ms. Pratima Shelar for the Respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : 4th December, 2015.
DATED : JANUARY 22, 2016.**

P.C.

1. This is an application under Section 482 of Code of Civil Procedure, 1973 seeking to quash the Criminal Case No. 4700235/SW/2011 under Section 323, 324, 504, 506, 345, r/w. 34 of the Indian Penal Code, pending on the file of the Metropolitan Magistrate's 23rd Court at Esplanade, Mumbai.

2. The respondent no.2 complainant is the Vice President of IDBI

Karmachari Sangh, whereas the applicants are the office bearers and members of All India Industrial Development Bank Employees Association. The respondent no.2 had lodged a complaint before the Metropolitan Magistrate's, 23rd Court, Esplanade, Mumbai alleging that on 12.8.2011 the Chief General Manager of IDBI Bank had fixed a meeting on 29.8.2011 on the third floor of IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai. The applicant as well as the complainant and the other office bearers were called to attend the said meeting. The respondent no.2 complainant had alleged that while he and the other members were proceeding to the venue of the meeting, about 15-20 unknown members of the complainant union dragged them to the first floor and assaulted them with kicks and blows. The said persons also threatened to cause their death and they confined them in the room till 5.45.p.m. The respondent no.2 had alleged that he had lodged a complaint before the police authorities. Since no action was taken, he filed a private complaint before the learned Metropolitan Magistrate.

3. The learned Metropolitan Magistrate recorded statement of the complainant under Section 200 of Cr.P.C. and by order dated

21.5.2015, the learned Metropolitan Magistrate issued process against the applicant and the other co-accused. Aggrieved by the said order, the applicants herein have filed this application.

4. Mr. Shaikh, the learned Counsel for the applicants has submitted that the correspondence produced by the respondent no.2 along with the affidavit in reply, particularly the e-mail dated 30.8.2011 clearly indicates that no untoward incident as alleged had taken place. He submitted that the allegations in the complaint do not disclose offence under Section 324, 345, 504 of IPC.

5. The learned Counsel for the applicants has submitted that there is inordinate delay in lodging the complaint as the incident had allegedly occurred on 29.8.2011 whereas the complaint was lodged only on 5.9.2011. The learned Counsel for the applicants has further submitted that even though some of the applicants were residing in an area beyond the territorial jurisdiction of the Magistrate concerned, the Magistrate had not complied with the provisions of Section 202 of Cr.P.C. He has submitted that the Magistrate has issued process mechanically without application of mind.

6. Ms. Shelar, the learned Counsel for the respondent has submitted that the averments made in the complaint prima facie disclose that the applicants along with the other co-accused had prevented the complainant and the other members of the union to proceed to the venue of the meeting and that they had dragged them to the first floor and confined them in a room till about 5.45 p.m. He has further submitted that the averments made in the complaint further reveal that the applicant herein had threatened and assaulted the complainant and the other members. She has submitted that the complaint could not be lodged immediately because of the threats given by the applicants herein. Nonetheless, the incident was brought to the notice of the bank authorities and it was only after they failed to take any action against the applicants, that the private complaint came to be filed.

7. I have perused the complaint and considered the submissions advanced by the learned Counsel for the applicant and the learned counsel for the respondent no.2.

8. At the outset it may be mentioned that in *M/s. Pepsi Food Ltd.*

& Anr. vs. Special Judicial Magistrate & Ors., 1998 (5) SCC 749

the Apex Court has held that “under Section 482 of the Code the inherent powers could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

9. In the instant case, the complaint dated 5.9.2011 states that the Chief General Manager of the IDBI Bank had fixed a meeting on 29.8.2011 at 3.p.m. on 23rd floor of IDBI Tower, WTC Complex, Cuffe Parade, Mumbai. The Office bearers /members of the IDBI Karmachari Sangh, of which the applicant is the Vice President were

called for the meeting. Accordingly, the complainant and the other office bearers reached the venue at about 2.30 p.m. It is alleged that the applicant-accused and about 15.-20 unknown persons who were at the venue, forcibly dragged them into a room situated on the first floor, assaulted them by kicks and blows and threatened to cause their death. The case of the respondent is that they were confined in the said room till 5.45 p.m. Based on these averments, the learned Magistrate has issued process under Sections 323, 324, 504, 506, 149, 345 r/w. 34 of IPC.

10. It is to be noted that Section 324 is a punitive provision for voluntarily causing hurt by dangerous weapon or means. Whereas Section 345 of IPC prescribes punishment for wrongful confinement of a person knowing that the writ for the liberation of the person has been duly issued. The averments in the complaint indicate that the complainant was beaten up by fist blows and kicks. The complaint does not indicate that the applicants herein were armed with weapons or any instrument specified in Section 324 of IPC. The complaint on the face of it does not disclose essential ingredients of section 324 and 345 of IPC, despite which, the learned Magistrate

has issued process under Section 324 and 345 of IPC, which fact clearly indicates that the process has been issued mechanically without application of mind.

11. In the case of M/s. Pepsi Food Ltd. (supra) the Apex Court has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

12. In the instant case, the learned Magistrate has issued process without even scrutinizing the contents of the complaint. It is also pertinent to note that the respondent no.2 complainant has filed his affidavit in reply and along with the affidavit in reply he has produced an e-mail dated 30.8.2011 sent to him by the officials of the bank, which was in response to the mail sent by the complainant on 30.8.2011. It is well settled that while exercising the inherent jurisdiction under Section 482 Cr.P.C. the Court cannot embark upon an enquiry in respect of the defence of the accused. Nonetheless, in appropriate cases, the court can consider the documents produced by the accused, if the documents are uncontroverted and beyond suspicion of doubt. In the instant case, the documents are produced by the complainant and since these documents are uncontroverted the same can be looked into in exercise of powers under Section 482 Cr.P.C.

13. A perusal of the said e-mail indicates that the complainant herein had informed the bank officials that on the relevant date he had come for discussion on the settlement of wage and service

condition, but they were prevented at the main gate of the premises by the activist of All India Industrial Development Bank Employees Association, and that they were beaten up and kidnapped and restrained in a room on the first floor. By the said e-mail the bank officials had informed the complainant that the security had instructed the police personnel who were present on the ground floor to go to the first floor where the union office of All India Industrial Development Bank Employees Association is located and after verifying they were informed by the police authorities that non violent discussions were taking place between the various people of the union and that there was no untoward incident. The said document which has been produced by the complainant himself reveals that no incident as alleged by the complainant had taken place on the relevant date. The allegations made in the complaint taken in their entirety do not prima facie make out any case against the applicants as well as against the other accused who are not before this court. Hence, continuation of the proceeding would be nothing but abuse of process of law.

14. It is also to be noted that the alleged incident had taken place

on 29.8.2011, whereas the averment made in para 5 of the complaint indicate that the police complaint regarding the said incident was lodged on 5.9.2011, without giving any cogent reasons or explaining the inordinate delay in lodging the complaint.

15. Furthermore, the other accused who not before this court are the natives of Calcutta. The records reveal that the learned Magistrate had not conducted any enquiry under Section 202 of Cr.P.C.

16. It is pertinent to note that the provisions of Section 202 were amended vide Amendment Act 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The object of introducing this amendment was to protect the innocent persons being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by the police officer, or by such other officer as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases. In the case of *Vijay Dhanuka v.*

Najima Mamtaj 2014 ALL MR (Cri.) 1924 (SC) the Apex Court had held that Section 202 of Cr.P.C. inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at the place beyond the area in which he exercises his jurisdiction” and thereafter to either enquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. The Apex Court has held that the amendment of Section 202 Cr.P.C. was necessitated as false complaints were filed against persons residing at far off places in order to harass them. Considering the purpose for which the amendment has been brought, the Apex Court held that an inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

17. In the instant case the learned Magistrate has not complied with this mandatory provision. Furthermore, the complaint on the face of it does not disclose essential ingredients of the offence. Hence, no purpose would be served in keeping the case pending against these accused.

18. Under the circumstances and in view of the discussion supra, the application is allowed. The complaint case No.4700235/SW/2011 pending on the file of the Metropolitan Magistrate's 23rd Court, Esplanade, Mumbai is hereby quashed.

(ANUJA PRABHUDESSAI, J.)