

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3116 OF 2014

Vency F. Correia & anr. ... Petitioner.

Versus

Avinash Shankar Sakpal & ors. ... Respondents.

Mr. S.M. Oak h/f. Mr. S.A. Joshi, advocate for petitioner.

Mr. K.P. Shetye, advocate for respondent Nos. 1 and 2.

Mrs. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 13, 2016

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondents. Perused the papers.

2 Rule. Rule is made returnable forthwith with the consent of the parties.

3 The Petitioner herein impugns the order dated 3/7/2014 passed by the District Judge- 5 & Additional Sessions Judge, Thane in Criminal Revision Application No. 25 of 2014, thereby rejecting the prayer for quashing the order of issuance of process passed by the learned Judicial Magistrate First Class, Mira-Bhyander, Thane vide order dated 19th October, 2013.

4 Perused the complaint filed by the respondent. It is specifically contended that the original complainant happens to be the tenant in Babubhai Mestry Chawl Nos. 1 and 2, Station Road, Bhayander. Accused No. 1 happens to be the landlord of the said premises and the accused No. 2 happens to be the son of the landlord. The complainant has made specific averments that the accused had intention to demolish the building. That the complainant had filed an application seeking repairs of the dilapidated building and the permission was granted. The landlord has challenged the said in the Writ Petition pending before the Division Bench. It is submitted

across the bar that the order for repairs has been stayed by the Hon'ble Division Bench and the Writ Petition is due for hearing.

5 As on today, this Writ Petition questions the correctness of the order of issuance of process. The learned Judicial Magistrate has recorded verification statement of the complainant and also the statement of the witnesses and thereafter, has arrived at a prima facie conclusion that offences under section 426, 447 of the Indian Penal Code have been attracted and hence, passed an order of issuance of process.

6 Learned Counsel for the petitioners submits that in Writ Petition No. 7593 of 2013 there is observation by the Hon'ble Division Bench of this Court in the order dated 13/2/2014 as follows : "It is not in dispute between the parties that no portion of the building is now being occupied by any of the occupants." The complaint is filed on 25/7/2013 i.e. almost one year prior to the observations made by this Hon'ble Division Bench.

7 The learned Counsel for the respondents submits that in fact, on the date of hearing of the Writ Petition No. 7593 of 2013 and other Writ Petition, the respondents i.e. original complainant had vacated the premises for the purpose of carrying out the repairs. To which the learned Counsel for the Petitioners submits that the dispute is of civil nature and therefore, the order of issuance of process would be an abuse of process of law.

8 This Court cannot be oblivious of the settled position of the law that although the nature of dispute may have a civil cause, in the eventuality that an offence is made out, initiation of criminal prosecution would not be an embargo.

9 Taking into consideration all the aspects, the Petition deserves to be dismissed. No interference is warranted in the order passed in the Revision Application by the Sessions Court. In fact, the prayer in the complaint was for seeking direction under Section 156(3) of the

Code of Criminal Procedure, 1973. The learned Magistrate had considered the recitals of the complaint and after application of judicial mind had arrived at a conclusion to issue process prima facie for the offence punishable under Section 426, 447 of the Indian Penal Code.

10 In view of the above observations, the petition stands dismissed. The rule is discharged. The Writ Petition stands disposed of in the above terms.

(SMT. SADHANA S. JADHAV,J)