

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3698 OF 2014**

Mohammedali Gheewala @ Bharwani	...Petitioner
Versus	
Ashok Atmaram Deshmukh & Anr.	...Respondents

Mr. Maitreya Girish Shukla for the Petitioner

Mr. Ashok Kumar Mishra for the Respondent No. 1

Mr. Avinash Kamkhedkar, A.P.P for the Respondent No. 2-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 30th AUGUST, 2016

P.C. :

1. Heard learned Counsel for the petitioner, learned Counsel for the respondent No. 1 and learned A.P.P for the respondent No.2-State.

2. By this petition, the petitioner seeks quashing of the order issuing process dated 10th October, 2013 passed in Case No. 145/SW/2013 by the learned Metropolitan Magistrate, 37th Court, Esplanade, Mumbai, as well as the order dated 28th August, 2014 passed in Criminal Revision Application No. 1469 of 2013 by the Additional Sessions Judge, Mumbai, dismissing the said Revision preferred by the petitioner.

3. Learned Counsel for the petitioner states that there are several disputes between the petitioner and the complainant i.e respondent No. 1. He submits that a perusal of the complaint shows, that the dates on which the alleged incident is stated to have taken place, is false, inasmuch as, the complaint is filed on 8th April, 2013 and it is stated in the complaint in para 2, “I say that yesterday at about 4.30 pm I had come to the Kila Court for making inquiries about my court case bearing C.C. No.646/PW/2012 for the offences under section 120-B, 420, 465, 468 and 471 of I.P.C., which I have filed against the accused persons.” He submits that in view of the said statement, the incident had taken place on 7th April, 2013, which is not correct. He further submits that there is no medical certificate annexed to the complaint to show that the complainant had sustained injuries on his person, pursuant to the assault. According to the learned Counsel, even the offence under Section 506 of the I.P.C is not disclosed, inasmuch as, no words are uttered as is required and contemplated under Section 506 of the I.P.C. He relied on the judgment of this Court in the case of ***Madhavrao Gajanan Deshpande vs. The State of Maharashtra & Anr.***¹.

1 2003 (4) Mh.L.J. 101 (decided on 17th October, 2002)

4. Learned Counsel for the respondent No. 1 opposed the application. He submitted that a perusal of the complaint as well as verification statement shows the manner in which the incident had taken place. He submitted that all these facts are disputed questions of fact which cannot be gone into in writ jurisdiction.

5. Perused the papers, in particular, the complaint, the verification statement, the impugned order dated 10th October, 2013 issuing process as well as the impugned order dated 28th August, 2014, by which, the petitioner's revision application came to be dismissed. A perusal of the complaint and the verification statement of the respondent No. 1 (complainant) shows the manner in which the incident had taken place outside the Court premises. It is stated that the accused persons including the petitioner stopped him outside the main gate of the Court premises and abused him in filthy words, asked him to withdraw the Court case which he had filed against them or else, they would break his legs and hands. It is also stated that the accused threatened him that even his dead body would not be traceable. He has further stated that when he told them that he

would not withdraw the case, the accused persons held him and assaulted him with fists and kick blows, pursuant to which, he shouted for help and people who had gathered around helped him and freed him from the accused persons. He has further stated that thereafter, he ran towards the Azad Maidan Police Station, where the accused persons followed him. He has stated that he, somehow, entered the police station and the police officials present there saved him from the accused persons. He has further stated that he orally requested the police to lodge an FIR, but the Police did not lodge the FIR, hence, he was constrained to lodge a private complaint.

6. The submissions advanced by the learned Counsel for the petitioners that there is a discrepancy in the dates, is a matter, which will be considered at the stage of trial. Similarly, the allegations whether offences under Sections 323 and 506 of the I.P.C are disclosed or not, in the absence of a medical certificate, is a matter which will be considered by the trial Court, after evidence is adduced. *Prima facie*, the complaint discloses the alleged offences. This Court will not go into disputed questions of facts, in its writ jurisdiction. Hence, the petition being devoid of merits, is dismissed.

7. It is made clear that the learned Judge shall conduct the case on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.