

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1207 OF 2016**

Smt. Vaijayanti Raghunath Kalekar Applicant.

V/s

State of Maharashtra & Anr. Respondents.

Advocate Ms. Vaijayanti Kalekar, Applicant in person.

Mr. S.K. Shinde, Public Prosecutor a/w Mrs. M.H. Mhatre, APP for the State.

Mr. Paramjeet Singh Dahiya, DCP, Zone-5 present.

Mr. Milind Edekar, Senior Police Inspector, Mahim Police Station, present.

Mr. Ganesh Chaudhari, API & Investigating Officer, Mahim Police Station, present.

**CORAM: V. M. KANADE &
Ms. NUTAN D. SARDESSAI, JJ.**

DATE: 20th December, 2016

P.C.:-

1] Heard the learned Counsel appearing on behalf of the Applicant and the learned Public Prosecutor appearing on behalf of the State.

2] This is an application filed by the Applicant for quashing the criminal complaint filed against her for the offences punishable under

sections 353, 188, 506 of the Indian Penal Code.

3] The Complainant was a lady constable attached to Mahim Police Station. She has alleged that the Applicant used to park her car in front of the Police Station and was constructing a temporary shed. She was therefore called to the Police Station. Some altercation took place between the Applicant and the Complainant and thereafter present complaint has been filed.

4] We have read the statement of the complainant. Perusal of the complaint does not disclose ingredients of the offence punishable under sections 353, 188, 506 of the Indian Penal Code.

5] Applicant has alleged that after the complaint was filed, the same constable used to stop her for no reason and a constable was sent to her house to serve summons. This is however denied by the learned Public Prosecutor.

6] This is an unfortunate case where the unfortunate incident had been blown out of proportion by both, the Applicant as well as the Respondents. Perusal of the statement discloses that the Applicant informed the complainant that she is a practicing Advocate in the Court and she is going to construct a shed there and the complainant may do whatever she likes. It is alleged that she further threatened the complainant that if a complaint is filed against her, she will ensure

that Officers of the Mahim Police Station would be suspended. Thereafter, when complainant tried to stop her, she left the police station. In our view, even if the statements made in the complaint are accepted on its face value, the ingredients of the offences which are levelled against the Applicant are not made out. Applicant also ought not to have behaved in the police station in the manner as stated in the allegations made in the complaint if these allegations are to be accepted as correct because, ultimately, it cannot be forgotten that Advocates, Police Officers, Public Prosecutors and Courts are stakeholders in the criminal administration of justice and they are expected to respect each other and not to fight with each other in such a manner. Without going into correctness or otherwise of whatever is mentioned here, we are of the view that the allegations levelled against the Applicant are not borne out from the statement made by the complainant.

7] We are informed that the charge-sheet has been filed in the present case. Respondents also have filed report stating therein that there are certain other complaints filed against the present Applicant. These complaints are of the years 2008 and 2009. These are old complaints in respect of disputes between the Applicant and her neighbours.

8] The Apex Court in *R.P. Kapur vs State of Punjab*¹ has given in para 6 of its judgment some of the categories of cases where the

1 AIR 1960 SC 866

inherent jurisdiction to quash proceedings can and should be exercised and they are as under:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court

would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of evidence the accusation made against the accused would not be sustained.

In our view, ratio of the said judgment will squarely apply to the facts of the present case.

9] Perusal of the statement of the complainant clearly discloses that ingredients of the offences levelled against the Applicant are not made out even if they are accepted on its face value.

10] Under these circumstances, Application is allowed. FIR No.281 of 2016 registered with Mahim Police Station and which is culminated in filing of charge-sheet in C.C. No.1942/PW/2016 which is pending before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai and the proceedings in C.C. No.1942/PW/2016 are quashed and set aside.

11] Application is accordingly disposed of.

(Ms. NUTAN D. SARDESSAI, J.)

(V.M. KANADE, J.)